



## COUNTY OF LOS ANGELES

### FIRE DEPARTMENT

1320 NORTH EASTERN AVENUE  
LOS ANGELES, CALIFORNIA 90063-3294  
(323) 881-2401

DARYL L. OSBY  
FIRE CHIEF  
FORESTER & FIRE WARDEN

June 09, 2015

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Supervisors:

# ADOPTED

BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

49 June 9, 2015

  
PATRICK O'QUINN  
ACTING EXECUTIVE OFFICER

**APPROVAL OF CONTRACT WITH SCANHEALTH, INC., DBA SANSIO  
FOR A MOBILE ELECTRONIC PATIENT CARE REPORT SYSTEM  
(ALL DISTRICTS) (3 VOTES)**

**CIO RECOMMENDATION: APPROVE (X) APPROVE WITH MODIFICATION ( )  
DISAPPROVE ( )**

### **SUBJECT**

The Consolidated Fire Protection District of Los Angeles County (District) is requesting approval of a contract with ScanHealth, Inc., dba Sansio (Sansio) to provide a mobile Electronic Patient Care Report (ePCR) system supported by a back-end record management system (RMS) and hosting services on District provided mobile hardware. The specialized technical services will provide a dependable and accurate pre-hospital field data capture system and directly improve service delivery to County residents.

**IT IS RECOMMENDED THAT THE BOARD ACTING AS THE GOVERNING BODY OF THE  
CONSOLIDATED FIRE PROTECTION DISTRICT OF LOS ANGELES COUNTY:**

1. Approve and instruct the Mayor to sign a contract (Attachment B) between the District and Sansio for an ePCR system and hosting services. The initial term of the contract will be for three (3) years, with two (2) one-year and six (6) month-to-month extension options, not to exceed a total possible contract term of five (5) years and six (6) months. The contract shall be effective on July 1, 2015, or upon Board approval, whichever date is later.
2. Authorize the maximum contract sum of \$3,700,800, including the extension periods, with the maximum contract sum comprised of: (a) Contract Elements of \$3,084,000; (b) Optional Work/Pool

Dollars of \$616,800. The maximum contract sum includes the initial contract term of three (3) years, with two (2) one-year and six (6) month-to-month extension options.

Contract expenditures are as follows:

- Year 1 at \$957,000. \$300,000 of this expenditure represents fixed fees for implementation services and is based upon a milestone payment structure. The milestone payments capture all compensation for implementation services from the effective date through the final acceptance of the system by the District. Due to this pricing structure, a portion of the \$300,000 may be rolled into future years, if necessary.
- Year 2 at \$657,000.
- Year 3 at \$657,000.
- Year 4 at \$325,200.
- Year 5 at \$325,200.
- Six-month extension at \$162,600.
- Optional work/pool dollars at \$616,800.

3. Delegate authority to the Fire Chief, or his designee, to (a) amend, suspend, and/or terminate the contract, if deemed necessary, in accordance with the approved contract terms and conditions; (b) approve and execute Amendments, with prior review by County Counsel and the Chief Information Office, using Optional Work/Pool Dollars included as part of the maximum contract sum, provided the amounts payable under such Amendments do not exceed the available amount of Pool Dollars; and (c) exercise the extensions as described in paragraph one above.

4. Find that this contract is exempt from the provisions of the California Environmental Quality Act (CEQA).

### **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

The District provides services to approximately 3.9 million residents in an area of over 2,400 square miles. The District's services include fire suppression, pre-hospital care, hazardous materials mitigation, technical rescues, open and land-based water rescues, and various other services. The District also offers regional support/management of cross-jurisdictional incidents, as well as working with State and federal agencies in deploying strike teams, task forces and overhead personnel to help support/manage larger scale incidents. The aggregate total of emergency incidents is approximately 300,000 per year. Approximately 280,000 of these incidents are Emergency Medical Services (EMS) type incidents. To help the District succeed in its strategic goals and continue its position as a leader in public service, the District is in need of an industry-recognized ePCR system supported by a back-end RMS.

The District's current RMS process for physical patient care reports (PCR) consists of a combination of manual sorting, batching and filing of the paper documents. The PCRs are subsequently scanned; data is then retrieved by use of an Optical Character Recognition solution. The final phase of the process involves the physical data correction and/or validation by District employees. Due to changes in the current service requirement, the existing RMS no longer meets the District's business needs; including patient tracking, data collection, risk management analysis, and required record reporting. In addition, the District needs to be able to retrieve and update structured patient records utilizing the National EMS Information System (NEMSIS) version 2.2.1 format, and establish the "roadmap" to NEMSIS version 3, which is possible with the proposed ePCR system.

### **SCOPE**

Sansio will be responsible for implementation, continuous system support, software, hosting services, data transfer and data exchange services, as well as other supporting components of the system. The RMS and server will be hosted by Sansio as a Software as a Service model. Sansio will not be responsible for managing District computing infrastructure affected by the ePCR system; however, Sansio will collaborate with the District's Information Management Division (IMD) to implement the proposed solution. Sansio will comply with all federal, State and local laws, rules, and regulations concerning the security and sharing of patient information, as well as any and all related sensitive records.

## **OBJECTIVES**

The ePCR system will facilitate the modernization of the District's current RMS. It will collect patient information from the point of patient contact, thereby eliminating duplicate data entry by field personnel in other systems, e.g., National Fire Incident Reporting System (NFIRS). Additionally, the ePCR system will improve current and future patient outcomes with accurate front-end data collection and dependable back-end reporting. The ePCR system will streamline the compilation and delivery of District approved pre-hospital care data reports to designated agencies, including the Department of Health Services (DHS), on a scheduled basis. Consequently, the system will create operational efficiency with real-time accurate data collection, while analyzing responses with a high degree of accuracy, and with minimal compilation efforts.

## **Implementation of Strategic Plan Goals**

Approval of the recommended actions is consistent with the County's Strategic Plan Goal #1 Operational Effectiveness/Fiscal Sustainability: Maximize the effectiveness of processes, structure, operations, and strong fiscal management to support timely delivery of customer-oriented and efficient public services. The District is supporting this goal by replacing the current record management process with the proposed mobile ePCR system that is supported by a back-end RMS. The proposed solution will enable the District to fulfill its identified business gaps, strengthen the District service capabilities, and aid in making strategic operational decisions with supported real-time data, as well as support quality patient care.

## **FISCAL IMPACT/FINANCING**

Sufficient funding has been identified in the District's Fiscal Year 2015-16 Budget. There is no impact to net County cost. Costs for the term of this contract were included in Sansio's pricing proposal (Attachment D). The District is confident the contract comprehensively covers the requirements to implement the ePCR system. However, given the scale of the project and unknowns related to initial implementation and on-going technological advancements, an additional twenty percent in Optional Work/Pool Dollars has been included to account for any unforeseen work requirements such as additional services, new software capabilities, etc.

## **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

The District is authorized to enter into a contract for these services pursuant to Health and Safety Code Section 13861. The contract contains all of the applicable Board mandated provisions. The contract also contains certain IT provisions to protect the District in the event of Sansio's deficient performance and/or breach of warranties, such as intellectual property indemnification, holdbacks, and payment withholds. The District has also obtained a broad license from Sansio that will provide the right to make the system and software available to an unlimited number of authorized users.

The contract's standard terms and conditions were aggressively negotiated by the District with assistance from Chief Executive Office (CEO) Risk Management, County Counsel and outside counsel. The contract also contains a modified Termination for Default provision that provides for a 30-day period in which to cure a material breach of the contract. The parties agreed to minor revisions to the standard County provisions relating to indemnification and insurance, with concurrence from CEO Risk Management.

In accordance with the Board's policy of engaging outside counsel for certain IT agreements, County Counsel retained the law firm of Foley & Larder, LLP to assist in all aspects of this procurement. Accordingly, Foley & Lardner, LLP, in conjunction with County Counsel, assisted the District in its Request for Proposals (RFP) planning and drafting; advised on aspects of the RFP evaluation process; and assisted in drafting and negotiating the recommended contract. The contract has been reviewed and approved as to form by County Counsel and properly executed by Sansio. The Chief Information Officer reviewed this request and recommends approval (Attachment A). CEO Risk Management has reviewed the contract provisions concerning insurance and indemnification and approved those provisions.

## **ENVIRONMENTAL DOCUMENTATION**

The services provided through this contract will not have a significant effect on the environment and, therefore, is exempt from CEQA, pursuant to Section 15061 (b)(3) of the CEQA Guidelines.

## **CONTRACTING PROCESS**

On March 17, 2014, the District released a RFP to solicit qualified vendors to provide an ePCR for the District. The solicitation was open for a period of six weeks. In addition to posting the announcement on the County's WebVen, an advertisement was placed in the Los Angeles Times. Seventeen vendors were identified on the Los Angeles County bid website and were notified via email, thereby maximizing the outreach to potential proposers.

## **SOLICITATION REQUIREMENTS REVIEW**

In accordance with Board Policy No. 5.055 (Services Contract Solicitation Protest), prospective proposers were allowed the opportunity to request a review of the requirements under this solicitation. The District received three requests for a Solicitation Requirements Review. After careful review by District Subject Matter Experts (SME) and management, and in concurrence with County Counsel, the District determined the requests did not prove any of the potential proposers were unfairly disadvantaged, and therefore stood by the accuracy of the minimum requirements.

On the April 30, 2014 deadline for proposal submission, the District received six proposals. All six proposals were reviewed to determine whether they met minimum mandatory requirements, in accordance with the Selection Process and Evaluation Criteria set forth in the RFP. It was determined that five of the vendors met all of the minimum qualifications. One vendor was disqualified from submitting a proposal and offered the opportunity to submit a Disqualification Review. The vendor did in fact submit a Disqualification Review and, after careful review and consultation with County Counsel and outside counsel, the determination was made to stand by the accuracy of the disqualification.

The remaining five proposals were evaluated by an evaluation committee using the informed averaging methodology. The evaluation committee was comprised of SMEs from the District's EMS Bureau and IMD. The committee's evaluation was based on criteria set forth in the RFP, which included price, qualifications, experience, references, approach, and quality control. Sansio was the highest ranked, responsive and responsible proposer. The local Small Business Enterprise (SBE) program's provisions were included in the RFP, however, none of the vendors were certified as Local SBE vendors; therefore the local SBE credit was not applied in the RFP evaluation process. The District has evaluated and determined that Sansio complies with the District's policy of compliance with the Community Business Enterprises Program (Attachment C), and agrees to maintain compliance with all terms and conditions throughout the term of the contract. The District has reviewed the Better Business Bureau and the State's Business License websites to assess the vendor's past performances, and/or negative experiences, and finds that the vendor does not have any current violations or complaints. Sansio was evaluated and deemed capable of performing the services requested, based on qualifications and experience as stated in its proposal.

#### DEBRIEFING

On June 11, 2014, the remaining four proposers were notified that they were not selected for contract award and offered a debriefing on their proposal evaluations. ImageTrend Inc. (ImageTrend) was the only proposer to request a debriefing. ImageTrend was satisfied with the debriefing results and did not continue with the protest process.

#### **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

In addition to many productivity improvements, the proposed ePCR system will enhance the District's Quality Assurance initiatives by providing real-time reporting and trending analysis, which can be utilized to improve patient care.

#### **CONCLUSION**

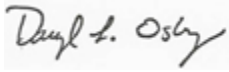
Upon execution by your Board, the District requests that the Executive Office of the Board notify the District's Contract Administrator, Lucy Guadiana, at (323) 838-2275, when the documents become available.

The Honorable Board of Supervisors

6/9/2015

Page 6

Respectfully submitted,



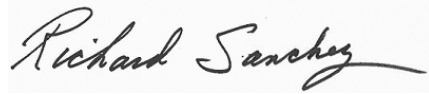
DARYL L. OSBY

FIRE CHIEF, FORESTER & FIRE WARDEN

DLO:cs

Enclosures

Reviewed by:



RICHARD SANCHEZ

Chief Information Officer



**RICHARD SANCHEZ**  
CHIEF INFORMATION OFFICER

## Office of the CIO CIO Analysis

NUMBER:

**CA 15-09**

DATE:

**5/26/15**

SUBJECT:

### **APPROVAL OF CONTRACT WITH SCANHEALTH, INC. DBA: SANSIO FOR A MOBILE ELECTRONIC PATIENT CARE REPORT SYSTEM**

RECOMMENDATION:

☒ Approve☐ Approve with Modification☐ Disapprove

CONTRACT TYPE:

☒ New Contract☐ Sole Source☐ Amendment to Contract #:☐ Other:

CONTRACT COMPONENTS:

☐ Software☐ Hardware☐ Telecommunications☒ Professional Services

SUMMARY:

Department Executive Sponsor: Daryl L. Osby, Fire Chief

**Description:** The Fire Chief of the Consolidated Fire Protection District of Los Angeles County is requesting approval from the Board to enter into an Agreement with ScanHealth, Inc. dba: Sansio to provide a mobile Electronic Patient Care Report (ePCR) system and hosting services. The initial term of the Agreement will be for three years, with two 1-year and six month-to-month extension options, not to exceed a total possible contract term of five years and six months.

Contract Amount: \$3,700,800

Funding Source: Fire District Fiscal Year (FY) 2015-16  
Budget☐ Legislative or Regulatory Mandate☒ Subvened/Grant Funded: Fire DistrictNo additional Net County  
Cost (NCC) needed.

#### **Strategic and Business Analysis**

PROJECT GOALS AND OBJECTIVES:

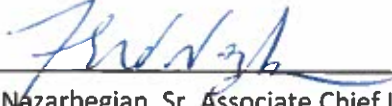
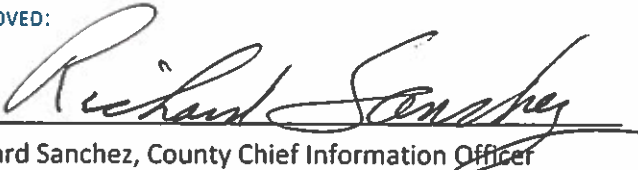
To modernize the District's current Records Management System (RMS). Collect patient information from the point of patient contact, eliminating duplicate data entry in other systems by field personnel and improve current and future patient outcomes with accurate data collection and dependable reporting.

BUSINESS DRIVERS:

The District's current record management of patient care reports involves a combination of manual sorting, batching, and filing. Consequently, the District uses scanned documents, Optical Character Recognition (OCR), and manual validation of collected data to refine and validate handwritten records. Under this Agreement the County will receive a Software as a Service (SaaS) hosted solution for an electronic pre-hospital data collection and records management system. Implementation is expected to take approximately 13 months.

	<p><b>PROJECT ORGANIZATION:</b></p> <p>The Fire Department is driving this project. The project has an on- site Sansio Project Manager and a Fire Department dedicated Business Operations Project Director and a Project Manager from Information Management Division (IMD), who will be managing the implementation and ongoing operation of ePCR.</p> <hr/> <p><b>PERFORMANCE METRICS:</b></p> <p>Sansio will be responsible for implementation, continuous system support, software, hosting services, data transfer, and data exchange services, as well as other supporting components of the system. The RMS and servers will be hosted by Sansio as a SaaS model. The Agreement includes a service level Agreement identifying metrics for the application management and software maintenance, including:</p> <ul style="list-style-type: none"> <li>○ 24X7 Hosted System Support</li> <li>○ Redundancy and disaster recovery</li> <li>○ 99.99% systems uptime service level</li> <li>○ Response Time Service Level</li> </ul> <hr/> <p><b>STRATEGIC AND BUSINESS ALIGNMENT:</b></p> <p>The ePCR solution is strategically aligned with Country Goal number 1, operational efficiency and with the Fire District's Business Services.</p> <hr/> <p><b>PROJECT APPROACH:</b></p> <p>The overarching project goal is to modernize the existing manual patient records management and to enhance its capabilities with the development of a new electronic mobile enabled interface for Fire personnel in the field. The mobile feature will provide Fire personnel a better information capturing capability, increase information accuracy by reducing data entry errors, increase data transmission to the hospital and reduce billing back-log. Laptop and tablet devices for this project will be purchased separately.</p> <hr/> <p><b>ALTERNATIVES ANALYZED:</b></p> <p>On March 17, 2014, the District released a Request for Proposals (RFP) to solicit qualified vendors to provide an ePCR solution for the District. Sansio was selected via a competitive bid process.</p>
<p><b>Technical Analysis</b></p>	<p><b>ANALYSIS OF PROPOSED IT SOLUTION:</b></p> <p>The application is delivered via a web-based, remote-hosted SaaS model and is accessible to end users securely over the Internet through a browser. The phased-in implementation plan will require the contractor to implement its product/service based on region, identified by priority levels. The new solution will also increase security and privacy compliance through transactional audit trails, imbedded Identification, authentication, and Encryption policies. Additionally, consistent with the encryption Board Motion issued on May 27, 2014, specific security/privacy control requirements (i.e., data encryption) has been incorporated into the Agreement. Fire Department is not a covered entity under HIPAA.</p> <p>Fire is required to submit data files to Local Emergency Medical Services Agency (LEMSA) organization. At this time information is not transmitted directly into the Department of Health Service's Trauma Emergency Management Information System</p>



	(TEMIS) until DHS-LEMSA-TEMIS update their data collection system with new data standards.
<b>Financial Analysis</b>	<p><b>BUDGET:</b></p> <p>Total contract cost</p> <ul style="list-style-type: none"> <li>• Year 1 at \$627,000 + 300,000 implementation services = \$957,000</li> <li>• Year 2 at \$657,000</li> <li>• Year 3 at \$657,000</li> <li>• Year 4 at \$325,200</li> <li>• Year 5 at \$325,200</li> <li>• Six-month extension at \$162,600</li> <li>• Optional work/pool dollars at \$616,800</li> </ul> <p><b>TOTAL CONTRACT COST: \$3,700,800</b></p>
<b>Risk Analysis</b>	<p><b>RISK MITIGATION:</b></p> <ol style="list-style-type: none"> <li>1. There are minimal risks to the proposed implementation. This is a SaaS solution.</li> <li>2. The Chief Information Security Officer (CISO) reviewed the Agreement and did not identify any IT security or privacy related issues.</li> </ol>
<b>CIO Approval</b>	<p><b>PREPARED BY:</b></p> <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="text-align: center;">         Fred Nazarbegian, Sr. Associate Chief Information Officer     </div> <div style="text-align: center;"> <u>5-27-15</u>        Date     </div> </div> <p><b>APPROVED:</b></p> <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="text-align: center;">         Richard Sanchez, County Chief Information Officer     </div> <div style="text-align: center;"> <u>5-27-15</u>        Date     </div> </div>

Please contact the Office of the CIO (213.253.5600 or [info@cio.lacounty.gov](mailto:info@cio.lacounty.gov)) for questions concerning this CIO Analysis. This document is also available online at <http://cjointranet.lacounty.gov/>

**APPENDIX A**  
**CONTRACT**  
**FOR MOBILE ELECTRONIC PATIENT**  
**CARE REPORT SYSTEM**



**BY AND BETWEEN**  
  
***CONSOLIDATED FIRE PROTECTION DISTRICT OF***  
***LOS ANGELES COUNTY***  
  
**AND**  
  
***SCANHEALTH INC. DBA SANSIO***

78382

**CONTRACT PROVISIONS  
TABLE OF CONTENTS**

<b>PARAGRAPH</b>	<b>TITLE</b>	<b>PAGE</b>
<b>RECITALS</b>		<b>1</b>
<b>1.0</b>	<b>APPLICABLE DOCUMENTS</b>	<b>2</b>
<b>2.0</b>	<b>DEFINITIONS</b>	<b>3</b>
<b>3.0</b>	<b>WORK</b>	<b>8</b>
<b>4.0</b>	<b>TERM OF CONTRACT</b>	<b>14</b>
<b>5.0</b>	<b>PRICE AND FEES</b>	<b>15</b>
<b>6.0</b>	<b>INVOICES AND PAYMENTS</b>	<b>18</b>
<b>7.0</b>	<b>OWNERSHIP AND LICENSE</b>	<b>22</b>
<b>8.0</b>	<b>CONFIDENTIALITY AND SECURITY</b>	<b>29</b>
<b>9.0</b>	<b>ADMINISTRATION OF CONTRACT- DISTRICT</b>	<b>35</b>
9.1	DISTRICT'S PROJECT DIRECTOR	35
9.2	DISTRICT'S PROJECT MANAGER	35
9.3	DISTRICT PERSONNEL	35
9.4	RESPONSIBILITIES	35
9.5	DISTRICT TRAINING SECTION	36
<b>10.0</b>	<b>ADMINISTRATION OF CONTRACT - CONTRACTOR</b>	<b>36</b>
10.1	CONTRACTOR'S PROJECT MANAGER	36
10.2	CONTRACTOR'S PROJECT DIRECTOR	37
10.3	APPROVAL OF CONTRACTOR'S STAFF	37
10.4	CONTRACTOR'S STAFF IDENTIFICATION	37
10.5	BACKGROUND AND SECURITY INVESTIGATIONS	37
10.6	REPORTS BY CONTRACTOR	38
<b>11.0</b>	<b>STANDARD TERMS AND CONDITIONS</b>	<b>38</b>
11.1	CHANGE NOTICES AND AMENDMENTS	39
11.2	ASSIGNMENT AND DELEGATION	39
11.3	AUTHORIZATION WARRANTY	40
11.4	BUDGET REDUCTIONS	40
11.5	COMPLAINTS	40
11.6	COMPLIANCE WITH APPLICABLE LAW	41
11.7	COMPLIANCE WITH CIVIL RIGHTS LAWS	42
11.8	COMPLIANCE WITH THE COUNTY'S JURY SERVICE PROGRAM	42

**CONTRACT PROVISIONS  
TABLE OF CONTENTS**

<b>PARAGRAPH</b>	<b>TITLE</b>	<b>PAGE</b>
11.9	CONFLICT OF INTEREST .....	43
11.10	CONSIDERATION OF HIRING COUNTY EMPLOYEES TARGETED FOR LAYOFF/OR RE-EMPLOYMENT LIST .....	44
11.11	CONSIDERATION OF HIRING GAIN/GROW PROGRAM PARTICIPANTS.....	44
11.12	CONTRACTOR RESPONSIBILITY AND DEBARMENT .....	44
11.13	CONTRACTOR'S ACKNOWLEDGEMENT OF DISTRICT'S COMMITMENT TO THE SAFELY SURRENDERED BABY LAW .....	46
11.14	CONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM.....	47
11.15	DISTRICT'S QUALITY ASSURANCE PLAN .....	47
11.16	DAMAGE TO DISTRICT FACILITIES, BUILDINGS OR GROUNDS .....	47
11.17	EMPLOYMENT ELIGIBILITY VERIFICATION.....	48
11.18	FACSIMILE REPRESENTATIONS .....	48
11.19	FAIR LABOR STANDARDS .....	48
11.20	FORCE MAJEURE .....	48
11.21	GOVERNING LAW, JURISDICTION, AND VENUE .....	49
11.22	INDEPENDENT CONTRACTOR STATUS.....	49
11.23	INDEMNIFICATION.....	50
11.24	GENERAL PROVISIONS FOR ALL INSURANCE COVERAGE .....	50
11.25	INSURANCE COVERAGE .....	54
11.26	INTENTIONALLY OMITTED.....	54
11.27	MOST FAVORED PUBLIC ENTITY .....	55
11.28	NO THIRD PARTY BENEFICIARY .....	55
11.29	NONDISCRIMINATION AND AFFIRMATIVE ACTION.....	56
11.30	NON EXCLUSIVITY.....	57
11.31	NOTICE OF DELAYS .....	57
11.32	NOTICE OF DISPUTES .....	57
11.33	NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT .....	57
11.34	NOTICE TO EMPLOYEES REGARDING THE SAFELY SURRENDERED BABY LAW .....	57

**CONTRACT PROVISIONS  
TABLE OF CONTENTS**

<b>PARAGRAPH</b>	<b>TITLE</b>	<b>PAGE</b>
11.35	NOTICES.....	57
11.36	PROHIBITION AGAINST INDUCEMENT OR PERSUASION .....	58
11.37	PUBLIC RECORDS ACT.....	58
11.38	PUBLICITY .....	58
11.39	RECORD RETENTION AND INSPECTION/AUDIT SETTLEMENT .....	59
11.40	RECYCLED BOND PAPER.....	60
11.41	SUBCONTRACTING .....	60
11.42	TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM.....	61
11.43	TERMINATION FOR CONVENIENCE .....	61
11.44	TERMINATION FOR DEFAULT .....	62
11.45	TERMINATION FOR IMPROPER CONSIDERATION.....	63
11.46	TERMINATION FOR INSOLVENCY.....	63
11.47	TERMINATION FOR NON-ADHERENCE OF COUNTY LOBBYIST ORDINANCE .....	64
11.48	TERMINATION FOR NON-APPROPRIATION OF FUNDS.....	64
11.49	VALIDITY .....	64
11.50	WAIVER.....	65
11.51	WARRANTY AGAINST CONTINGENT FEES.....	65
11.52	WARRANTY OF COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM .....	65
11.53	TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM .....	65
<b>12.0</b>	<b>UNIQUE TERMS AND CONDITIONS.....</b>	<b>68</b>
12.1	CONTRACTOR'S OBLIGATIONS AS A "BUSINESS ASSOCIATE" UNDER THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT of 1996 AND THE HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT .....	68
12.2	WARRANTIES.....	69
12.3	INTELLECTUAL PROPERTY INDEMNIFICATION .....	74
12.4	PATENT, COPYRIGHT AND TRADE SECRET INDEMNIFICATION.....	74
12.5	EXCLUSION OF ADDITIONAL TERMS .....	75

**CONTRACT PROVISIONS  
TABLE OF CONTENTS**

<b>PARAGRAPH</b>	<b>TITLE</b>	<b>PAGE</b>
12.6	EFFECT OF TERMINATION .....	75
12.7	SURVIVAL .....	77
SIGNATURES	.....	78

## **EXHIBITS**

- A STATEMENT OF WORK
- B PRICING SHEET
- C SERVICE LEVEL AND SUPPORT REQUIREMENTS
- D DISTRICT'S ADMINISTRATION
- E CONTRACTOR'S ADMINISTRATION
- F CONTRACTOR ACKNOWLEDGEMENT AND CONFIDENTIALITY AGREEMENT
- G CONTRACTOR'S EEO CERTIFICATION
- H JURY SERVICE ORDINANCE
- I SAFELY SURRENDERED BABY LAW
- J CONTRACTOR'S OBLIGATIONS AS A "BUSINESS ASSOCIATE" UNDER THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA) AND THE HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT (HITECH)
- K SOURCE CODE ESCROW AGREEMENT
- L ePCR SYSTEM SOFTWARE COMPONENTS
- M INFORMATION AND PRIVACY SECURITY REQUIREMENTS

## CONTRACT

### FOR MOBILE ELECTRONIC PATIENT CARE REPORT SYSTEM

This Contract for Mobile Electronic Patient Care Report System and Exhibits are made and entered into this 9th day of June, 2015 by and between the Consolidated Fire Protection District of Los Angeles County, hereinafter referred to as the "District," and Scanhealth Inc., dba Sansio, hereinafter referred to as the "Contractor."

#### RECITALS

WHEREAS, the District may contract with private businesses for a Mobile Electronic Patient Care Report System ("ePCR") when certain requirements are met; and

WHEREAS, the Contractor is a private business specializing in providing an ePCR; and

WHEREAS, the Contractor warrants that it possesses the necessary special skills, experience, knowledge, technical competence and sufficient staffing to perform under this Contract; and

WHEREAS, the Contractor agrees to furnish the ePCR and related services and technical support subject to the terms of the Contract; and

WHEREAS, the District is authorized to enter into contracts for special services pursuant to California Health and Safety Code Section 13861 and California Public Contract Code Section 20812.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for good and valuable consideration, the parties agree to the following:



## **1.0 APPLICABLE DOCUMENTS**

### **1.1 Contract**

This document ("Base Contract"), along with Exhibits A through L ("Exhibits") including all appendices, attachments and schedules thereto, attached hereto and incorporated herein by reference, collectively form and are referred to as the "Contract." The Contract constitutes the complete and exclusive statement of understanding between the parties and supersedes all previous and contemporaneous agreements, whether written or oral, and any and all communications and negotiations between the parties relating to the subject matter of this Contract.

### **1.2 Interpretation**

In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any task, Deliverable, goods, service, or other Services, or otherwise between the Base Contract and the Exhibits, or between Exhibits, such conflict or inconsistency shall be resolved by giving precedence first to the Base Contract and then to the Exhibits according to the following priority.

EXHIBIT A - Statement of Work

EXHIBIT B - Pricing Sheet

EXHIBIT C - Service Level and Support Requirements

EXHIBIT D - District's Administration

EXHIBIT E - Contractor's Administration

EXHIBIT F - Contractor Acknowledgement and Confidentiality Agreement

EXHIBIT G - Contractor's EEO Certification

EXHIBIT H - Jury Service Ordinance

EXHIBIT I - Safely Surrendered Baby Law

EXHIBIT J – Business Associate Agreement under the Health Insurance Portability AND Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH)

EXHIBIT K - Source Code Escrow Agreement

EXHIBIT L - ePCR System Software Components

EXHIBIT M – Information and Privacy Security Requirements

## 2.0 DEFINITIONS

The headings herein contained are for convenience and reference only and are not intended to define the scope of any provision thereof. Terms not defined where they first appear in the Contract shall be construed to have the following meanings, unless otherwise apparent from the context in which they are used.

**“Accept” or “Acceptance”:** The District's written approval of any tasks, subtasks, deliverables, goods, services or other Services, including System Tests, provided by the Contractor to the District pursuant to this Contract.

**“Additional Work”:** Professional services, Software Modifications (which may include Third Party Software provided through Contractor), and/or additional products, which may be provided by the Contractor in accordance with Paragraph 3.2 (Additional Work).

**“Board of Supervisors”:** The Board of Supervisors of the County of Los Angeles; the governing body of the District and the County of Los Angeles.

**“Compatible” or “Compatibility”:** The (a) applicable components of the District Environment are capable of supporting, operating and otherwise performing all anticipated functions of such District Environment components, when used in conjunction with the System Software, and (b) applicable components of the System Software are capable of supporting, operating and otherwise performing all anticipated functions of such System Software components, when used in conjunction with the District Environment, and (c) components of System Software are capable of supporting, operating and otherwise performing all anticipated functions of such System Software components, when used in conjunction with one another.

**“Configurations”:** The selection of options or the customization to input screens, templates and output within the System Software to reflect District requirements.

**“Contractor”:** The party that has entered into the Contract with the District.

**“Contractor's Project Director”:** The person responsible for the Contractor's performance under the Contract and ensuring the Contractor's compliance with the Contract.

**“Contractor's Project Manager”:** The person designated by the Contractor to administer the Contract operations after the award of the Contract.

**“County”:** The County of Los Angeles, a political subdivision of the State of California.

**“County Code”:** The Los Angeles County Code, as in effect from time to time.

**“Deficiencies” or “Deficiency”:** Any event or occurrence that is not part of the standard operation of an IT service or application, and that causes, or may cause, an interruption to, or a reduction in, the quality of that IT service or application.

**“Deliverable”:** A service, product, or good to be provided by the Contractor under this Contract, including those identified as numbered Deliverables in the Statement of Work.

**“District”:** The Consolidated Fire Protection District of Los Angeles County.

**“District Environment”:** The information technology environment used by District and its Users, including the software, computers, workstations, databases, operating system software, web browsers, internet and intranet systems, mobile devices, and electronic communication systems owned or operated by or on behalf of the District and its Users.

**“District's Project Director”:** The person designated by the District to ensure the objectives of the Contract are met.

**“District's Project Manager”:** The person designated by the District's Project Director to manage the operations under this Contract.

**“Day(s)”:** Calendar day(s) unless otherwise specified.

**“Destructive Mechanisms”:** Computer code that: (a) is designed to disrupt, disable, harm, or otherwise impede in any manner, including aesthetic disruptions or distortions, the operation of the System, System Software, Deliverables, Services, or any other software, firmware, hardware, computer system or network (sometimes referred to as “viruses” or “worms”); (b) would disable or impair the System, System Software, Deliverables, Services, or any other software, firmware, hardware, computer systems or networks in any way where such disablement or impairment is caused by the passage of time, exceeding an authorized number of copies, advancement to a particular date or other numeral (sometimes referred to as “time bombs,” “time locks” or “drop dead” devices); (c) would permit Contractor to access the System, System Software, Deliverables, Services, or any other software, firmware, hardware, computer systems or networks to cause such disablement or impairment (sometimes referred to as “traps,” “access codes” or “trap door” devices); or (d) which contains any other similar harmful, malicious or hidden procedures, routines or mechanisms which would cause such System, System Software, Deliverables, Services, or other programs to cease functioning or to damage or corrupt data, storage media, programs, equipment or communications or otherwise interfere with operations.

**“Documentation”:** Any and all written and electronic materials provided or made available by the Contractor under the Contract, including, but not limited to, documentation relating to the System, software specifications and functions, training course materials, specifications including System Requirements, technical manuals, handbooks, flow charts, technical information, reference materials, user manuals, operating manuals, quick reference guides, FAQs, and all other instructions and reference materials relating to the capabilities, operation, installation and use of the System Software and/or applicable components, existing as of the Effective Date and any revisions, supplements, and updates thereto.

**“Effective Date”:** The date of execution of this Contract by the Board of Supervisors.

**“ePCR”:** Mobile Electronic Patient Care Report System, more fully described in the Statement of Work.

**“Fire Chief”:** The fire chief of the District; also serves as the Forester and Fire Warden of the County of Los Angeles.

**“Fire Department”:** The department of the Forester and Fire Warden of the County of Los Angeles.

**“Fiscal Year”:** The twelve (12) month period beginning July 1st and ending the following June 30th.

**“Hardware”:** Computer hardware and all other equipment to be provided by the Contractor under the Contract.

**“Hosting Environment”:** The Contractor Data Center and all facilities, personnel, Hardware, and System Software provided by the Contractor as part of its obligation to perform Hosting Services under this Contract.

**“Hosting Software”:** Software of any nature (e.g. operating systems, presentation layer software, applications, utilities, tools, firmware and security) utilized in the Hosting Environment to provide the Hosting Services.

**“Implementation Services”:** The Services to implement the System, as specified in this Contract and the Statement of Work.

**“Interfaces”:** When used as a noun, “Interface” shall mean either a computer program developed by, or licensed to, District or Contractor to (a) translate or convert data from a District or Contractor format into another format used at District as a standard format, or (b) translate or convert data in a format used by District or a third-party to a format supported at District or vice versa. When used as a verb, “Interface” shall mean to operate as described above.

**“Pool Dollars”:** The amount allocated under the Contract for the provision by the Contractor of Additional Work approved by the District in accordance with the terms of the Contract.

**“Privacy and Security Laws”:** All federal and state laws applicable to the privacy, security, use, disclosure or protection of (a) “protected health information,” as that term is used under the Health Insurance Portability & Accountability Act (even if HIPAA is not applicable to the Contractor); (b) “nonpublic personal information” as that term is used under the Gramm-Leach-Bliley Act (even if GLBA is not applicable to Vendor); (c) “personal data,” as that term is defined under the EU Data Protection Directive 95/46/EC (even if such Directive is not applicable to the Contractor); and (c) any other information that identifies or can be used to identify an individual, (each, as amended from time to time), as well as all federal or state laws, statutes, regulations and ordinances relating to the privacy and security of personal information, including data security and security breach notification obligations.

**“Production Environment”:** The Hosting Environment set up by the Contractor for Production Use of the System Software as part of Implementation Services pursuant to Exhibit A (Statement of Work) and the District Environment systems used by District and District Authorized Users to use and access the System Software.

**“Production Use”:** The actual use of the System Software in the Production Environment to process actual data in District’s day-to-day operations commencing from the point of Final Acceptance.

**“Professional Services”:** Consulting services and/ or additional training that the Contractor may provide in accordance with Paragraph 3.2 (Additional Work).

**“Project Control Document”:** The document delivered by the Contractor and Accepted by the District pursuant to the Statement of Work.

**“Proposal”:** The proposal provided by Contractor in response to the RFP, as supplemented by all written correspondence of Contractor to clarify such proposal.

**“RFP”:** District’s Request for Proposal for the Mobile Electronic Patient Care Report System dated March 17, 2014.

**“Services”:** Collectively, all functions, responsibilities, tasks, subtasks, Deliverables, and other services, including Professional Services provided pursuant to Paragraph 3.2 (Additional Work): (a) identified in the Specifications; (b) identified in this Agreement as being Contractor’s responsibility; and (c) otherwise necessary to comply with the terms of this Agreement. Without increasing the scope of the Services, if any component task, subtask, service, or function is: (i) an inherent or necessary part of the Services defined in subparts (a), (b), or (c) of this Section; or (ii) a customary part of the Services defined in subparts (a), (b), or (c) of this Section, and not in conflict with Contractor’s established methods of providing services; and, as to a service(s) within either subpart (i) and (ii) of this sentence above, is not specifically described in this Agreement, then such service or function shall be deemed to be part of the Services. While District utilizes Hosting Services, any hardware and/or software provided to District by Contractor as part of the Hosting Services pursuant to this Agreement shall be deemed part of the Services. There are several subsets of the Services, specifically “Implementation Services,” “Hosting Services,” and “Maintenance and Support Services” that are included within this definition of “Services,” even though they are sometimes referenced by the Service grouping name (e.g., “Implementation Services,” “Hosting Services,” and “Maintenance and Support Services”). Each of these Service groupings includes both the broad definition of Services above, and the specific Services associated with the Service grouping and described in Exhibits and related documents incorporated into the definition of that Service grouping.

**“Software Modifications”:** Configurations and any other customizations of the System Software , including additional Interfaces and all components and Documentation, which may be provided by the Contractor under the Contract upon the District’s request therefor pursuant to Paragraph 3.2 (Additional Work). The Software Modifications are and shall become components of the System Software.

**“Software Updates”:** Any upgrades, enhancements, updates, revisions, improvements, bug fixes, patches and or modifications to the System Software, including but not limited to those required for the System Software to remain in compliance with applicable Federal, State and local laws, rules, and regulations and the terms of this Contract, required to be provided by the Contractor in accordance with Exhibit C (Service Level and Support Requirements), with all schedules thereto. Software Updates are and shall become components of the System Software.

**“Source Code”:** The sequence of instructions, written in a human readable computer programming language, and all documentation thereof, that is used by programmers to create a

computer-executable form, including the tools and developer kits that created and enable creation of such code, initialization files, configuration files, code libraries (both static and dynamic link), class path definitions, the logical and physical layout of all software components, and all files, processes, and procedures necessary to build, deploy, and execute the applicable software, such that collectively the foregoing will be sufficient to enable a person possessing reasonable skill and expertise in computer software and information technology to build, load, and operate the machine-executable object code of such software; to maintain and support such software; and to effectively use all functions and features of such software. If any portion of the Source Code is encrypted, Contractor shall include the decryption tools and decryption keys with the Source Code.

**“Specifications”:** All functional, technical, performance and other capability specifications for the System Software as set forth in this Contract, including the Statement of Work, Exhibit C(Service Level and Support Requirements), the System Requirements, the Documentation, to the extent not inconsistent with any of the foregoing in this definition, Contractor’s Proposal (but only to the extent (a) not inconsistent with any of the foregoing in this definition, and (b) acceptable to District), and the Business Objectives.

**“Statement of Work”:** One or more of the sequentially numbered written statements of work that specifically reference this Agreement and are attached hereto as Exhibit A (Statement of Work) to the Contract, including all attachments thereto, as the same may be amended by an Amendment executed pursuant to this Contract.

**“System”:** The System Software, Hosting Environment, Services and Professional Services, including all components and Documentation, collectively comprising the ePCR or Mobile Electronic Patient Care Report system, as specified in the Contract, including the Statement of Work.

**“System Requirements”:** The business, operational, technical and/or functional requirements relating to the operation or utilization of the ePCR, as specified in the RFP and the Contract, including the Statement of Work.

**“System Software”:** Individually each, and collectively all, of the computer programs and modules developed by Contractor and to be provided under this Contract (including Third-Party Software), including as to each such program or module, the processes and routines used in the processing of data, the object code, Interfaces to be provided hereunder by Contractor, Documentation, Revisions, and derivative works. All System Software and the components thereof shall be release versions, and shall not be test versions (e.g., alpha or beta test version), unless otherwise agreed to in writing by District.

**“System Test”:** Any System test conducted by the District or Contractor, as applicable, under Exhibit A (Statement of Work).

**“Third Party Application”:** The portion of the System Software provided by the Contractor to the District under this Contract that is not proprietary to the Contractor.

**“Third Party Software”:** All software and content licensed, leased, or otherwise obtained by Contractor from a third-party, and used with the System Software or used for the performance of

the Services and which is expressly identified in the Third-Party Products section of Exhibit L (ePCHR System Software Components)..

**“User”:** Any person authorized by the District to access or use the System pursuant to this Contract.

**“Version Releases”:** Any redistribution of System Software that contains an aggregation of Software Updates, major upgrade, or significant new features, functionality, and/or other performance improvements and is accompanied by a change in the reference to the System Software, such as a change in the number to the left of the period in the version numbering format X.XX or a change to the name of the software. Version Releases are and shall become components of the System Software.

## **3.0 WORK**

### **3.1 Scope**

3.1.1 Pursuant to the provisions of this Contract, and at the applicable rates and prices specified in Exhibit B (Pricing Sheet) with all schedules thereto, the Contractor shall fully and timely provide, complete, deliver, and implement all tasks, subtasks, Deliverables, services, goods and other Services as set forth in the Contract, including Exhibit A (Statement of Work) and Exhibit C (Service Level and Support Requirements) and any executed Change Notice or Amendment, in each case, in accordance with this Contract, the System Requirements and other Specifications, as may be provided. Additionally, the Contractor shall provide, complete, and deliver such tasks, subtasks, Deliverables, services, goods and other Services in accordance with the timeframes required by this Contract, including Exhibit A (Statement of Work) and all attachments thereto and Exhibit C (Service Level and Support Requirements) and/or any executed Change Notice or Amendment with all schedules thereto. Without limiting the foregoing, Contractor shall provide the Services set forth in this Paragraph 3 (Scope).

3.1.2 System Access and Implementation. The Contractor shall provide and implement the System, as specified in the Statement of Work, Exhibit C (Service Levels and Support Requirements) and as otherwise in this Contract, the System Requirements and all other Specifications.

3.1.3 Maintenance and Support Services.

3.1.3.1 Subject to the remainder of this Paragraph 3.1.3 in exchange for the District's payment of applicable Maintenance and Support Fees in accordance with this Contract, the Contractor shall provide maintenance and support services for the System, as described in, and in accordance with, the Statement of Work, Exhibit C (Service Level and Support Requirements), and otherwise in this Contract, including the provision of Software Updates and Version Releases (collectively, the “Maintenance and Support Services”). Maintenance and Support Services shall commence upon the Effective Date and continue throughout the Term.

The District's obligation to pay fees for Maintenance and Support Services is described in Paragraph 5.3 (Maintenance and Support Fees).

3.1.3.2 There shall be no additional charge to District for any on-site Maintenance and Support Services to remedy a breach of warranty, to correct a failure of the System to conform to the Specifications or Documentation, or to fulfill Contractor's obligations under this Contract. In the event that (i) the System fails to meet the System Requirements or other Specifications relating to System performance or the System Software components are not all Compatible among each other and (ii) the District, upon recommendation by the Contractor, upgrades, repairs or replaces any of the District Environment components without remedying the resulting Deficiency, the Contractor shall reimburse the District for any and all amounts expended by the District based on the Contractor-recommended upgrade to the District Environment to remedy such Deficiency.

3.1.3.3 In addition to the support set forth in this Paragraph, the Contractor shall provide the District and Users with the following support:

(a) User Support. Any User may contact the Contractor for support.

(b) The Contractor shall provide the District Project Director and District Project Manager with unlimited telephone support twenty-four (24) hours a day, seven (7) days a week throughout the Term.

(c) The Contractor shall provide unlimited telephone support twenty-four (24) hours a day, seven (7) days a week throughout the Term for Priority Level 1 and 2 issues. Contractor shall provide unlimited telephone support from 8:00 a.m. to 5:00 p.m., from Monday through Sunday throughout the Term for Priority Level 3 and 4 issues.

(d) The Contractor shall provide online access to technical support bulletins and other user and self-help support information and forums.

#### 3.1.4 Hosting Services.

3.1.4.1 Subject to the remainder of this Paragraph 3.1.4 (Hosting Services), the Contractor shall provide hosting services for the System Software to the District, as described in and in accordance with the Statement of Work, Exhibit C (Service Level and Support Requirements) and otherwise in the Contract, including provision of the Hosting Environment (collectively, the "Hosting Services").

3.1.4.2 As a part of the Hosting Services, the Contractor shall provide any and all goods, services and other Services, including the System Environment, necessary for the Contractor to host the System Software such that the System Software performs accordingly as set forth in the Statement of Work and Exhibit C (Service Level and Support Requirements).



- 3.1.4.3 Hosting Services shall commence from the effective date and continue throughout the Term. The District's obligation to pay fees for the Contractor's provision of the Hosting Services is described in Paragraph 5.4 (Hosting Fees).
- 3.1.5 License to System Software. The Contractor shall grant to the District a license to the System Software, Third Party Software, Software Updates, Hosting Environment components and any third party products that may be acquired by the District in order to meet System Requirements as such may be revised during the term of the Contract, in accordance with the provisions of Paragraph 7.0 (Ownership and License) and the Contract.
- 3.1.6 Services Not To Be Withheld. Services provided under this Contract will not be withheld due to any dispute arising under this Contract, another agreement between the parties, or any other related or unrelated dispute between the parties.

## **3.2 Additional Work**

- 3.2.1 Upon written request of the District's Project Director and execution of a Change Notice or Amendment pursuant to Paragraph 11.1 (Change Notices and Amendments), the Contractor shall provide the following (as applicable) to the District as Additional Work:
  - 3.2.1.1 Software Modifications creating new functionality or Interfaces outside of the scope of the System Requirements, as they then exist and not then-required to be provided by the Contractor under this Contract including Exhibit C (Service Level and Support Requirements) or otherwise in the Statement of Work.
  - 3.2.1.2. Software, tools and other products relating to System Software, outside of the scope of the System Requirements, as they then exist, and not then-required to be provided by the Contractor under this Contract, including Exhibit C (Service Level and Support Requirements) or otherwise in the Statement of Work.
  - 3.2.1.3 Professional Services outside the scope of services then-required to be provided by the Contract under this Contract including Exhibit C (Service Level and Support Requirement) or otherwise in the Statement of Work.
- 3.2.2 Additional Work shall utilize and be capped by the available Pool Dollars. In no event shall the District be obligated to pay in excess of the then-available Pool Dollars for Additional Work, nor shall the Contractor be required to perform any Additional Work for which there are no Pool Dollars available to pay to the Contractor.
- 3.2.3 Additional Work shall be treated by the parties as a change requiring the execution of a Change Notice or Amendment pursuant to Paragraph 11.1 (Change Notices and Amendments).

- 3.2.4 Upon the District's request and the Contractor's agreement to provide the Additional Work, the Contractor shall provide to the District within ten (10) business days of such request, or such longer period as agreed to by the District, a written proposed scope of work and quote for a "not to exceed" amount for completion and delivery of the requested Additional Work in accordance with the applicable pricing terms set forth in Exhibit B (Pricing Sheet). The Contractor's quotation shall be valid for at least ninety (90) days from submission, unless otherwise agreed to by the District.
- 3.2.5 If the District finds the "not to exceed" amount acceptable, then the parties shall prepare and execute a Change Notice or Amendment, as applicable, pursuant to Paragraph 11.1 (Change Notices and Amendments). Upon execution of a Change Notice or Amendment, as applicable, the Contractor shall commence the Additional Work.

Upon completion and delivery by the Contractor, and acceptance by the District, any Software Modifications and/or any additional products shall become part of and be included in the System Software.

- 3.3 Approval of Work:** All tasks, subtasks, Deliverables and other Services provided by the Contractor under this Contract must have the written approval of the District's Project Director as described in this Paragraph ("Approve" or "Approval"). In no event shall the District be liable or responsible for any payment prior to such written Approval. Furthermore, the District reserves the right to reject any Services not Approved by the District.
- 3.4 Key Deliverables:** The Project Control Document provided for in Exhibit A (Statement of Work) shall specify certain Deliverables as Key Deliverables, as determined by the District. A Key Deliverable shall be deemed completed for purposes of this Paragraph 3.4 on the earliest date that all of the tasks, subtasks, deliverables, goods, services and other Services required for completion of such Key Deliverable are completed and delivered to the District, provided that all of such Services required for completion of such Key Deliverable are thereafter Approved in writing by the District pursuant to Paragraph 3.3 (Approval of Work) without prior rejection by the District or significant delay in the District's approval thereof, which delay is the result of the Contractor's failure to deliver such tasks, subtasks, deliverables, goods, services and other Services in accordance with the terms herein.
- 3.4 Unauthorized Work:** If the Contractor provides any tasks, deliverables, goods, services, or other Services, other than as specified in this Contract, the same shall be deemed to be a gratuitous effort on the part of the Contractor, and the Contractor shall have no claim whatsoever against the District.
- 3.5 Acceptance.** The District and/or the Contractor, as applicable, shall conduct all tests (Acceptance Test(s)) specified in the Contract and the Statement of Work. The Contractor shall achieve System Acceptance, as specified in the Contract and the Statement of Work, unless otherwise agreed to by the District in the Project Control Document.

### 3.5.1 **System Tests:**

- 3.5.1.1 User Acceptance Test: As set forth in Exhibit A (Statement of Work), to confirm that the System meets all System Requirements.
- 3.5.1.2 Final Acceptance Test: As set forth in Exhibit A (Statement of Work), to confirm that the System is ready for full Production Use by the District.
- 3.5.1.3 System Integration Test: Integrated testing of all components of the System.
- 3.5.1.4 System Performance Test: Testing to ensure that the System performance requirements are met.
- 3.5.1.5 System Security Test: Testing to confirm that the System security requirements will be met by the System.

3.5.2 **Production Use:** The System shall be ready for Production Use when the District's Project Director or designee gives the District's Approval in writing as specified in Exhibit A (Statement of Work).

3.5.3 **Final Acceptance:** The System shall achieve Final Acceptance when the District's Project Director or designee approves in writing as specified in Statement of Work "Final Acceptance"). In the event the System fails to successfully achieve Final Acceptance, the Contractor shall provide the District with a diagnosis of the Deficiencies and proposed solution(s). The District and Contractor shall agree upon all such proposed solutions prior to their implementation.

### 3.5.4 **Failed Testing**

- 3.5.4.1 If the District's Project Director makes a good faith determination at any time that the System as a whole, or any component thereof, has not successfully completed a System Test or has not achieved Final Acceptance (collectively referred to for purposes of this Paragraph as "Designated Tests"), the District's Project Director shall promptly notify the Contractor in writing of such failure, specifying with as much detail as possible the manner in which the System component or the System failed to pass the applicable Designated Test. The Contractor shall immediately commence all reasonable efforts to complete, as quickly as possible, such necessary corrections, repairs and modifications to the System component or the System as will permit the System component or the System to be ready for retesting. The Contractor shall notify the District's Project Director in writing when such corrections, repairs and modifications have been completed, and the applicable Designated Test shall begin again. If, after the applicable Designated Test has been completed for a second time, the District's Project Director makes a

good faith determination that the System component or the System again fails to pass the applicable Designated Test, the District's Project Director shall promptly notify the Contractor in writing, specifying with as much detail as possible the manner in which the System component or the System failed to pass the applicable Designated Test. The Contractor shall immediately commence all reasonable efforts to complete, as quickly as possible, such necessary corrections, repairs and modifications to the System component or the System as will permit the System component or the System to be ready for retesting.

- 3.5.4.2 Such procedure shall continue, subject to the District's rights under Paragraph 5.13 (Termination) in the event the Contractor fails to timely complete any Key Deliverable until such time as the District notifies the Contractor in writing either: (i) of the successful completion of such Designated Test or (ii) that the District has concluded, subject to the dispute resolution procedures of this Contract ("Dispute Resolution Procedure"), that satisfactory progress toward such successful completion of such Designated Test is not being made, in which latter event, the District shall have the right to make a determination, which shall be binding and conclusive on the Contractor, that a non-curable default has occurred and to terminate this Contract in accordance with Paragraph 11.44 (Termination for Default) on the basis of such non-curable default. In the event the Contractor, using good faith effort, is unable to cure a deficiency by re-performance after two (2) attempts, the District and Contractor will work together to agree on a mutually acceptable resolution, provided that if the District and Contractor cannot agree on a resolution, the District may terminate this Contract for default pursuant to Paragraph 11.44 (Termination for Default).
- 3.5.4.3 Such a termination for default by the District shall be, subject to the Dispute Resolution Procedure, either, as determined by the District in its sole judgment: (i) a termination with respect to one or more of the components of the System; or (ii) if the District believes the failure to pass the applicable Designated Test materially affects the functionality, performance or desirability to the District of the System as a whole, the entire Contract. In the event of a termination under this Paragraph, the District shall have the right to receive from the Contractor (i) reimbursement of all payments made to the Contractor by the District under this Contract for the System component(s) and related Deliverables as to which the termination applies or (ii) if the entire Contract is terminated, all amounts paid by the District to the Contractor under this Contract. If the termination applies only to one or more System component(s), at the District's sole option, any reimbursement due to it may be credited against other sums due and payable by the District to the Contractor. The foregoing is without prejudice to any other rights that may accrue to the District or Contractor under the terms of this Contract or by law.

- 3.5.5 **System Use:** Subject to the District's obligations of Acceptance set forth in Exhibit A (Statement of Work) and the Contract, prior to Final Acceptance by the District, the District shall have the right to use, in a Production Use mode, any completed portion of the System, without any additional cost to the District where the District determines that it is necessary for the District's operations. Such Production Use shall not restrict the Contractor's performance under this Contract and shall not be deemed Acceptance or Final Acceptance of the System.

### 3.6 Multi-Vendor Environment

- 3.6.1 **Cross-Over Issues:** The Contractor acknowledges that it will be delivering the Services in a multi-vendor environment, with the District and District's designee(s) providing services relating to the District's Environment. Effective operation of such an environment requires not only the cooperation among all service providers, including the Contractor, but also collaboration in addressing service-related issues that may cross over from one service area or provider to another and related to the Services ("Cross-Over Issues"). As part of the Services, the Contractor will actively provide and support tasks associated with operating and maintaining a collaborative approach to Cross-Over Issues in the same manner as if the Contractor Service relevant to the Cross-Over Issue was being provided in-house by the District rather than by the Contractor.
- 3.6.2 **Service Interdependencies:** The Contractor shall use commercially reasonable efforts to identify all work efforts and Deliverables of which the Contractor has knowledge, whether performed by the Contractor, subcontractors, the Contractor's third-party vendors, the District, or the District's designee(s) that may impact the delivery of the Services (the "Service Interdependency"). For each Service Interdependency, the Contractor shall verify that project plans, detailed to the task level with individual performance responsibility identified, have been developed by the party responsible for the work or Deliverable, and validate that each project plan reflects delivery of the work or Deliverables required by the Contractor to deliver the Services in accordance with the Specifications. The Contractor shall implement processes to ensure it is receiving regular reports, from all parties responsible for a Service Interdependency, with sufficient data to enable it to validate that each Service Interdependency is proceeding in accordance with the timing applicable to that Service Interdependency, and that the then current timing of delivery of the work or Deliverables as to each Service Interdependency will not adversely impact the Contractor's ability to deliver the Services in accordance with the Specifications. The Contractor shall take reasonable steps to validate that the data it receives in the reporting process is supported by tangible progress on the Service Interdependency. Within a reasonable period of time of knowledge of any Service Interdependency, the Contractor shall provide the District with a written report outlining the scope and nature of such Service Interdependency and the Contractor's proposed resolution to remedy such Service Interdependency.

## 4.0 TERM OF CONTRACT

- 4.1 The initial term of this Contract ("Initial Contract Term") shall be three (3) years commencing after the Effective Date, unless sooner terminated or extended, in whole or in part, as provided in this Contract.
- 4.2 The District shall have the sole option to extend the Initial Contract Term ("Contract Term Extension") for up to two (2) additional one-year periods and six (6) month to month extensions, for a maximum total Contract term of five (5) years and six (6) months ("Total Contract Term"). Each such option and extension shall be exercised at the sole discretion of the Fire Chief or his designee as authorized by the Board of Supervisors.

The District maintains databases that track/monitor contractor performance history. Information entered into such databases may be used for a variety of purposes, including determining whether the District will exercise an option for a Contract Term Extension.

- 4.3 The Contractor shall notify the District when this Contract is within six (6) months from the expiration of the term of the Contract as provided for hereinabove. Upon occurrence of this event, the Contractor shall send written notification to the District at the address herein provided in Exhibit D - District's Administration.

## 5.0 PRICE AND FEES

- 5.1 **Contract Sum.** The amount the District shall expend from its own funds during the Total Contract Term shall not exceed the total maximum amount of Three Million Seven Hundred Thousand Eight Hundred Dollars (\$3,700,800) ("Maximum Contract Sum"). The Total Contract Term includes the Initial Contract Term of three (3) years, with two (2) additional one-year and six (6) month-to-month Contract Term Extensions. The Maximum Contract Sum includes Pool Dollars and all applicable taxes.

- 5.1.1 The Maximum Contract Sum shall be the total monetary amount payable by the District to the Contractor for supplying all the tasks, subtasks, Deliverables, goods, Services, and any other goods, services or Additional Work, provided by the Contractor under this Contract as set forth in Exhibit B (Pricing Sheet), but is not a commitment or offer on the part of County to spend such sums allocated under the Maximum Contract Sum for Additional Work. The Contractor shall perform and complete all Services required of the Contractor under this Contract as set forth in Exhibit B (Pricing Sheet), but in any event, not in excess of the Maximum Contract Sum.

- 5.1.2 The Contractor acknowledges and agrees that the Maximum Contract Sum is an all-inclusive, not-to-exceed price that cannot be adjusted for any costs or expenses whatsoever of Contractor. This Contract includes the full amount of compensation and reimbursement that the District will be asked to provide to the Contractor in order for the Contractor to fully perform all of its obligations under this Contract, with such amount of compensation and reimbursement subject to any executed Amendments if applicable. The Contractor understands that the District is entering into this Contract in reliance upon the premise that the

Contractor shall fully perform all of its obligations under this Contract without seeking any additional compensation or reimbursement beyond that already provided for in this Contract, subject to any Amendments, if applicable. It is the Contractor's risk and responsibility to achieve and timely deliver the System in accordance with the requirements of the Contract.

- 5.2 **License Fees for Software.** Exhibit B (Pricing Sheet) sets forth the aggregate License Fees for System Software, including Third Party Software, payable during the Initial Contract Term and any Contract Term Extension.
- 5.3 **Implementation Cost:** The Contractor shall provide the Implementation Services, including the System Software, Third Party Software, and Hosting Software set up, installation, testing, training and other Services required for successful implementation of the System, in accordance with this Contract and Exhibit A (Statement of Work) in exchange for the District's payment for the costs of implementation ("Implementation Cost") specified in Exhibit B (Pricing Sheet). The Implementation Cost shall not exceed the amount specified in Exhibit B (Pricing Sheet).
- 5.4 **Maintenance and Support Fees** Exhibit B (Pricing Sheet) includes the aggregate Maintenance and Support Fees payable by the District during the Initial Contract Term and any Contract Term Extension for Maintenance and Support Services, as provided in Paragraph 3.1.3. Maintenance and Support Fees are payable on a monthly basis in arrears, commencing with the District's Acceptance of the fully implemented and deployed System, as set forth in Deliverable 2.9 of the Statement of Work. The Maintenance and Support Fees shall remain firm and fixed and shall not increase, during the Initial Contract Term and any Contract Term Extension.
- 5.5 **Hosting Fees** Exhibit B (Pricing Sheet) includes the aggregate Hosting Fees payable by the District during the Initial Contract Term and any Contract Term Extension for Hosting Services as provided under Paragraph 3.1.4. Hosting Fees are payable on a monthly basis in arrears, commencing with the District's Acceptance of the Deliverables for implementation and Production Use of the System as set forth in Exhibit A (Statement of Work). The Hosting Fees shall remain firm and fixed and shall not increase during the Initial Contract Term and any Contract Term Extension.
- 5.6 **Additional Work.** Exhibit B (Pricing Sheet) includes the Pool Dollars available under this Contract for the purchase of Additional Work using an Amendment under Paragraph 11.1 (Change Notices and Amendments), and for the reimbursement for California sales tax from a tax rate increase as provided in an Amendment under Paragraph 11.1. The total amount of available Pool Dollars shall be decreased by each Amendment and may only be increased by executing an Amendment in accordance with Paragraph 11.1 (Change Notices and Amendments).
- 5.7 **Taxes.** Except as otherwise expressly provided in the Contract, or an Amendment thereto, the amounts set forth on Exhibit B (Pricing Sheet) include all amounts necessary for the District to reimburse the Contractor for all applicable California and other state and local sales/use taxes on all System components provided by the Contractor to the District pursuant to or otherwise due as a result of this Contract. All

California sales/use taxes shall be paid directly by the Contractor to the State or other applicable taxing authority. Should the annual rate of California sales tax increase subsequent to the date of execution of the Contract, Pool Dollars may be used to reimburse the Contractor for the amounts resulting from said increase in California sales tax pursuant to an Amendment to the Contract. The Contractor shall be solely liable and responsible for, and shall indemnify, defend, and hold harmless the District from, any and all such California and other state and local sales/use taxes. Further, the Contractor shall be solely liable and responsible for, and shall indemnify, defend, and hold harmless the District from all applicable California and other state and local sales/use tax on all other items provided by the Contractor pursuant to this Contract and shall pay such tax directly to the State or other taxing authority. In addition, the Contractor shall be solely responsible for all taxes based on the Contractor's income or gross revenue, or personal property taxes levied or assessed on the Contractor's personal property to which the District does not hold title.

**5.8 Cost of Living Adjustments (COLAs).** Rates are fixed for the Initial Contract Term and any Contract Term Extension. There is NO cost of living adjustment (COLA), economic change adjustment, or other inflationary escalator to be applied under this Contract.

**5.9** The Contractor shall not be entitled to payment or reimbursement for any tasks or services performed, nor for any incidental or administrative expenses whatsoever incurred in or incidental to performance hereunder, except as expressly agreed in an executed Amendment. Assumption or takeover of any of the Contractor's duties, responsibilities, or obligations, or performance of same by any entity other than the Contractor, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever, shall occur only with the District's express prior written Approval.

**5.10** The Contractor shall maintain a system of record keeping that will allow the Contractor to determine when it has incurred seventy-five percent (75%) of the total contract authorization under this Contract. Upon occurrence of this event, the Contractor shall send written notification to District at the address herein provided in Exhibit D - District's Administration.

**5.11 No Payment for Services Provided Following Expiration/ Termination of Contract**

The Contractor shall have no claim against the District for payment of any money or reimbursement, of any kind whatsoever, for any service provided by the Contractor after the expiration or other termination of this Contract. Should the Contractor receive any such payment it shall immediately notify the District and shall immediately repay all such funds to the District. Payment by the District for services rendered after expiration/termination of this Contract shall not constitute a waiver of the District's right to recover such payment from the Contractor. This provision shall survive the expiration or other termination of this Contract.

**5.12 Intentionally Omitted**



### 5.13 Termination

In addition to any other rights or remedies to which the District is entitled under this Contract, if any Key Deliverable is not completed within thirty (30) days after the applicable Due Date, and thereafter Approved in writing by the District pursuant to Paragraph 3.3 (Approval of Work), other than as a result of delays caused by acts or omissions of the District as determined by the Fire Chief or designee in his/her reasonable judgment, and unless the District's Project Director and Contractor's Project Director have otherwise agreed in writing prior to such date scheduled for completion, then the District may, upon notice to Contractor, terminate this Agreement for default in accordance with Paragraph 11.44 (Termination for Default) or for convenience in accordance with Paragraph 11.43 (Termination for Convenience), as determined in the sole discretion of the District, subject to the cure provisions set forth in Paragraph 11.44 (Termination for Default).

## 6.0 INVOICES AND PAYMENTS

### 6.1 Invoices.

The Contractor shall invoice the District only for providing the tasks, deliverables, goods, services, and other Services specified in Exhibit A (Statement of Work) and elsewhere hereunder and in accordance with the amounts set forth in Exhibit B (Pricing Sheet). The Contractor shall prepare invoices, which shall include the charges owed to the Contractor by the District under the terms of this Contract. The Contractor's payments shall be as provided in Exhibit B (Pricing Sheet), and the Contractor shall be paid only for the tasks, Deliverables, goods, services, and other Services Approved in writing by the District. If the District does not Approve work in writing, no payment shall be due to the Contractor for that work.

6.1.1 The Contractor's invoices shall be priced in accordance with Exhibit B (Pricing Sheet).

6.1.2 The Contractor's invoices shall contain the information set forth in Exhibit A (Statement of Work) describing the tasks, Deliverables, goods, Services, work hours, and facility and/or other work for which payment is claimed.

6.1.3 Payment to the Contractor shall be made on an arrears basis, upon Acceptance of completed work by the District, if the Contractor is not in default under any provisions of this Contract. The Contractor shall submit the monthly invoices to the District by the 15th calendar day of the month following the month of service. Provide a complete **ORIGINAL** invoice and one (1) copy to the following address:

**Consolidated Fire Protection District of Los Angeles County  
Financial Management Division, Expenditure Management  
P.O. Box 910901  
Commerce, CA 90091-0901**

In addition, the Contractor shall deliver one (1) copy of the invoice and all pertinent work order documentation for review and payment approval to the following:

**Consolidated Fire Protection District of Los Angeles County  
Information Management Division  
5815 Rickenbacker Road  
Commerce, CA 90040  
Attn: Robert Sawyer, Department Chief Information Officer**

#### **6.1.4 District Approval of Invoices**

All invoices submitted by the Contractor for payment must have the written Approval of the District's Project Manager prior to any payment thereof. In no event shall the District be liable or responsible for any payment prior to such written Approval. Approval for payment will not be unreasonably withheld by the District.

#### **6.1.5 Invoice Discrepancies**

The District's Project Director will review each invoice for any discrepancies and will, within thirty (30) days of receipt thereof, notify the Contractor in writing of any discrepancies found upon such review and submit a list of disputed charges. The Contractor shall review the disputed charges and send a written explanation detailing the basis for the charges within thirty (30) days of receipt of the District's notice of discrepancies and disputed charges. If the District's Project Director does not receive a written explanation for the charges within such thirty (30) day period, the Contractor shall be deemed to have waived its right to justify the original invoice amount, and the District, in its sole discretion, shall determine the amount due, if any, to the Contractor and pay such amount in satisfaction of the disputed invoice, subject to the Dispute Resolution Procedure.

All correspondence to the District relating to invoice discrepancies shall be sent by email, followed by hard copy, directly to the District's Project Manager with a copy to the District's Project Director at the addresses specified in Exhibit D (District's Administration).

#### **6.1.6 Delivery of System Software**

It is in the intent of the parties that if any System Software or Documentation provided by the Contractor under this Contract, including any product of Maintenance and Support Services or Additional Work, is delivered to the District, such delivery shall be made either (i) in electronic format (e.g., via electronic mail or internet download) or (ii) personally by the Contractor staff who shall load such System Software and Documentation onto the District's hardware but who will retain possession of all originals and copies of such tangible media (e.g., CD-ROM, magnetic tape, printed manuals) used to deliver the System Software and Documentation to the District.

Any System Software and Documentation that is provided or delivered by the Contractor to the District in a tangible format shall be F.O.B. Destination. The Maximum Contract Sum shown in Paragraph 5.1 (Contract Sum) includes all amounts necessary for the District to reimburse the Contractor for all

transportation and related insurance charges, if any, on System Software components and Documentation procured by the District from the Contractor pursuant to this Contract. All transportation and related insurance charges, if any, shall be paid directly by the Contractor to the applicable carrier. The Contractor shall be solely liable and responsible for, and shall indemnify, defend, and hold harmless the District from, any and all such transportation and related insurance charges.

#### **6.1.7 Sales/Use Tax**

Unless otherwise expressly provided in the Contract or pursuant to an Amendment to the Contract, the Maximum Contract Sum shown in Paragraph 5.1 (Contract Sum) shall be deemed to include all amounts necessary for District to reimburse the Contractor for all applicable California and other state and local sales/use taxes on all System components provided by the Contractor to the District pursuant to or otherwise due as a result of this Contract, including, but not limited to, any product of Maintenance and Support Services and any Additional Work, to the extent applicable. All California sales/use taxes shall be paid directly by the Contractor to the State or other applicable taxing authority. The Contractor shall notify the District in the event there is an increase in the rate of California sales tax, and the Pricing Sheet shall be modified accordingly to reflect an increase in California sales tax pursuant to an Amendment to the Contract.

The Contractor shall be solely liable and responsible for, and shall indemnify, defend, and hold harmless the District from, any and all such California and other state and local sales/use taxes. Further, the Contractor shall be solely liable and responsible for, and shall indemnify, defend, and hold harmless the District from, all applicable California and other state and local sales/use tax on all other items provided by the Contractor pursuant to this Contractor and shall pay such tax directly to the State or other taxing authority. In addition, the Contractor shall be solely responsible for all taxes based on the Contractor's income or gross revenue, or personal property taxes levied or assessed on the Contractor's personal property to which the District does not hold title.

### **6.2 Payments**

Provided that the Contractor is not in default under any provision of this Contract, the District will pay all invoice amounts to the Contractor within thirty (30) days of receipt of invoices that have not been disputed in accordance with Paragraph 6.1.5 (Invoice Discrepancies) above. The District's failure to pay within the thirty (30) day period, however, shall not be deemed as automatic invoice Approval or Acceptance by the District of any Deliverable for which payment is sought, nor shall it entitle the Contractor to impose an interest or other penalty on any late payment.

#### **6.2.1 District's Right To Withhold Payment**

Notwithstanding any other provision of this Contract and in addition to any rights of the District given by law or provided in this Contract, the District may upon written notice to the Contractor withhold payment for any deliverable while the Contractor, with no fault of the District, is in default hereunder or default related to Work.

### **6.2.2 Holdbacks**

The District will hold back ten percent (10%) of the amount of invoices for Implementation Services submitted by the Contractor under this Contract and Approved by the District pursuant to Paragraph 6.1 (Invoices), as further specified in Exhibit B (Pricing Sheet). The cumulative amount of such holdbacks shall be due and payable to the Contractor upon Final Acceptance, subject to adjustment for any amounts arising under this Contract owed to the District by the Contractor, including, but not limited to, any amounts arising from Paragraphs 6.1.5 (Invoice Discrepancies), 6.2.1 (District's Right to Withhold Payment) and any partial termination of any task, subtask, Deliverable or Service set forth in the Statement of Work as provided herein.

### **6.2.3 Local Small Business Enterprises – Prompt Payment Program**

Certified Local Small Business Enterprises will receive prompt payment for Services they provide to the District. Prompt payment is defined as 15 calendar days after receipt of an undisputed invoice.

## **6.3 Responsibilities for Costs**

Except for any reimbursable expenses specified in a Statement of Work, or as otherwise Approved in writing by the District, or as approved in an Amendment to the Contract, the Contractor shall be responsible for all costs and expenses incidental to the provision of the System and performance of Services, including but not limited to, all costs for Third-Party Software and equipment provided by the Contractor, and all fees, fines, licenses, bonds or taxes required of or imposed against the Contractor including but not limited to corporate income tax, sales and excise taxes or amounts levied thereof, and all other of the Contractor's costs of doing business. The Contractor shall supply copies of third-parties' invoices and other reasonable supporting documentation in substantiation of any reimbursable expenses, as the District may request from time to time. No payments will be made for services rendered or expenses incurred by the Contractor other than the Services or Deliverables unless such services are Approved in advance in writing by the District, and the Contractor supplies such documentation as the District may request with respect to such costs.

## **6.4 Travel and Living Expenses**

If reimbursement of travel expenses for Services, including airfare, parking, mileage, rental cars, taxi, fuel, tolls, lodging, and per diem, if applicable, are authorized by the District in connection with a separate Statement of Work, such expenses shall be subject to, and shall not exceed, the expenditure limits set forth for District personnel in

the then current Chapter 5.40 (Travel and Other Expenses) of the Los Angeles County Code, and as updated from time to time by the Los Angeles County Auditor-Controller. The Contractor will provide all invoices, receipts, and other documentation reasonably needed to support the request for reimbursement. For the avoidance of doubt, all travel and living expenses for the Services described in the Statements of Work are included in the Contract Sum.

## **6.5 Payment Does Not Imply Acceptance**

The making of any payment or payments by the District, or the receipt thereof by the Contractor, shall not imply Acceptance by the District of such items or the waiver of any warranties or requirements of this Contract.

# **7.0 OWNERSHIP AND LICENSE**

## **7.1 Ownership**

7.1.1. The Contractor acknowledges that the District, or the rightful owner, owns all District Environment components and the District Data, while the Contractor, or the rightful owner, shall retain ownership of all Hosting Environment components provided by the Contractor, as specified in this Contract, including the Statement of Work.

7.1.2 The proprietary and intellectual property rights to the original and copies of the System Software, and related Documentation, provided originally by the Contractor under this Contract, shall remain with the Contractor, or the rightful owner, and shall be subject to the terms of the License granted to the District pursuant to this Paragraph 7.0 (Ownership and License).

## **7.2 License**

### **7.2.1 System Software License Grant**

Subject to the provisions of Paragraph 7.0 (Ownership and License), the Contractor hereby grants to the District a perpetual, irrevocable, worldwide, non-exclusive license to access and use the System Software, including any related Documentation, for the District's business purposes and activities in accordance with the scope set forth in Paragraph 7.2.3 (Scope of License) and subject to the restrictions set forth in Paragraph 7.2.5 (License Restrictions). Notwithstanding the foregoing, System Software items identified on Exhibit L (ePCR System Software Components) as "Subscription" will have a license term coextensive with the Term.

### **7.2.2 District's Business Purposes and Activities**

Without limitation of the above, the District's business purposes and activities will include making the System, System Software and Documentation available to emergency medical technicians, firefighters, physicians, other health care

providers, and other health care facilities, federal, State, and local agencies, and business partners (each a “User”) to facilitate the use and the expansion of District’s ePCR System. The District will ensure that Users who are not employees, not under contract with the County, or are not otherwise under the management of the County, will execute confidentiality and appropriate use restrictions as to the ePCR System as set forth in this Contract.

### **7.2.3 Scope Of License**

For the purposes of the licenses granted to District in this Section 7 (Ownership and License) (collectively, the “Licenses”), the term “access and use” means to access, execute, operate, distribute, and run the System Software for test, development, production, archival, emergency restart, and disaster recovery purposes. Without limiting the foregoing, the Licenses provide the District with the rights:

- 7.2.3.1 To integrate the System Software with other software and the District Environment;
- 7.2.3.2 To configure the configurable aspects of the System Software and System;
- 7.2.3.3 To make the System and System Software available to an unlimited number of Users
- 7.2.3.4 To use, modify, copy and display the Documentation, including but not limited to System manuals, System Software manuals, and User manuals, as necessary or appropriate for the District to enjoy and exercise fully the rights granted under this Contract and the License;
- 7.2.3.5 To reproduce a reasonable number of copies of the System Software for archive and backup purposes so long as all copies of the System Software contain the proprietary notices appearing on the copies initially furnished to the District by the Contractor;
- 7.2.3.6 to the extent Contractor provides Subscription Software to be installed on the District’s Environment (collectively, “Client-Side Software”), the District has a right to install and use an unlimited number of copies of the Client-Side Software on the District Environment for the District’s business purposes and activities; and
- 7.2.3.7 to the extent the District has a perpetual license to the System Software, the District has the right to install an unlimited number of copies of such System Software on the Contractor’s Environment or the District Environment.

### **7.2.4 Successor Product**

During the Term, if (a) the System Software is displaced in Contractor's product line by another product or (b) a renamed product containing substantially similar functionality to the System Software is made generally available to clients by Contractor (even if the renamed product contains additional features, functionality, or other capabilities) (each a "Successor Product"), County shall receive such Successor Product as a Software Update..

**7.2.5 License Restrictions:** The District acknowledges and agrees that all rights in the System Software not expressly granted to the District are reserved to the Contractor, or its licensors, as applicable, and the Contractor, or its licensors, retain all proprietary rights in and to the foregoing. Accordingly, the District will not:

- (1) Reverse engineer, disassemble or decompile the System Software (except as permitted in accordance with Section 7.4 (Source Code); (2) Provide the System Software to third parties (excluding Users) on a timesharing, service bureau, or rental basis; or
- (3) Remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on, or during the use of, the System Software provided by the Contractor;

### **7.3 Third Party Software**

**7.3.1** The Contractor shall not use Third Party Software in the System without the prior written Approval of the District in accordance with Paragraph 3.3 (Approval of Work) to be granted or withheld in its sole discretion. In the event Contractor provides any Third Party Software to District in connection with this Contract for which Contractor is obligated to ensure that District accepts and is bound by third-party terms and conditions, the following shall apply: (a) Contractor shall specifically identify in writing all Third Party Software in Exhibit L (ePCR System Software Components) or the Statement of Work; (b) Contractor shall attach to this Contract or the Statement of Work written copies of all third-party license agreements applicable to District; and (c) Contractor warrants that: (i) it has the right to license any Third Party Software licensed to District under this Contract; (ii) to the best of Contractor's knowledge, the Third Party Software does not, and the use of the Third Party Software by District as contemplated by this Contract will not, infringe any intellectual property rights of any third-party; and (iii) unless specifically provided otherwise herein, District shall have no obligation to pay any third-party any fees, royalties, or other payments for District's use of any Third Party Software in accordance with the terms of this Contract. The District shall have access to the Source Code of any Third Party Software upon occurrence of any of the Release Conditions applicable to the Contractor's proprietary System Software specified in Paragraph 7.3.2 (Source Code Release Conditions) below.

### **7.4 Source Code**

#### **7.4.1 Source Code Escrow**

- 7.4.1.1 Upon the Effective Date of the Contract, but no later than the Contractor commences any Services hereunder, the Contractor shall, at no cost to the District, shall have deposited in Source Code Escrow the Source Code for all System Software that is part of the System (i) with a nationally recognized source code escrow company or (ii) with the District (hereinafter "Self Escrow") pursuant to the instructions from the District's Project Director. The Contractor shall ensure that the District has access to the Source Code for all System Software, either via delivery to the District's Self Escrow or pursuant to the Source Code Escrow Agreement (hereinafter, collectively or alternatively with "Self Escrow", "Source Code Escrow"), as applicable. A copy of each fully executed Source Code Escrow Agreement shall be incorporated herein by reference as Exhibit K (Source Code Escrow Agreement) to this Contract. There shall be no charge to the District for the acquisition and/or maintenance of the Source Code Escrow Agreement under this Contract.
- 7.4.1.2 The Contractor shall deposit in Source Code Escrow the Source Code for all System Software utilized by the Contractor for the System under this Contract, including the System Software, Interfaces, Third Party Software, customizations and Software Modifications (collectively, the "Deposited Source Code"). The Contractor shall update the Deposited Source Code by depositing in Source Code Escrow the Source Code for all Software Modifications, Software Updates, Replacement Products, if any, and any other modifications or enhancements to the deposited System Software and any System Software newly licensed or developed for the purpose of this Contract, promptly upon availability or as otherwise required by the District (which, upon deposit, shall become part of the Deposited Source Code). The Contractor's duty to update the Deposited Source Code shall continue through the term of this Contract.
- 7.4.1.3 The Contractor's duty to deposit and maintain the Deposited Source Code in Source Code Escrow shall continue throughout the term of this Contract, unless one of the Release Conditions occurs which would permit the District to obtain and use the Deposited Source Code in accordance with the terms of this Paragraph 7.4 (Source Code). The Contractor may, by written notice to the District, change the Source Code Escrow Agreement for the Deposited Source Code upon the District's Approval in accordance with Paragraph 3.3 (Approval of Work). Any such change shall be accomplished by a Change Notice in accordance with Paragraph 11.1 (Change Notices and Amendments) above and shall not modify the Contractor's obligations or the District's rights with respect to the Deposited Source Code under this Contract, nor impose any additional fees on the District.
- 7.4.1.4 The parties acknowledge that as a result of the passage of time alone, the Deposited Source Code may be susceptible to loss of quality



(“Natural Degeneration”). For the purpose of reducing the risk of Natural Degeneration, the Contractor shall deposit in Source Code Escrow a new copy of all Deposited Source Code no less frequently than every six (6) months. In the event the Deposited Source Code or any part of it is destroyed or corrupted, upon the District’s request, the Contractor shall deposit a replacement copy of the Deposited Source Code in Source Code Escrow.

## **7.4.2 Source Code Release Conditions**

7.4.2.1 In addition to any conditions for release of Deposited Source Code identified in any Source Code Escrow Agreement, the Contractor shall cause the release of the Deposited Source Code to the District, and the District shall have the right to immediately begin using the Deposited Source Code, as provided in Paragraph 7.4.4 (Possession and Use of Deposited Source Code), at no charge to the District, upon the occurrence of the following events (hereinafter, collectively with the release conditions identified in any Source Code Escrow Agreement, “Release Condition(s)”):

- (1) The insolvency of the Contractor, including as set forth in Paragraph 11.46 (Termination for Insolvency); or
- (2) The Contractor is unwilling or unable to provide all Maintenance and Support Services in accordance with the terms of this Contract, including Exhibit C (Service Level and Support Requirements); or
- (3) The Contractor ceasing to maintain or support the current version or the last two (2) prior Version Releases of the System Software for reasons other than the District’s failure to pay for, or election not to receive, the Contractor’s Maintenance and Support Services, and no other qualified entity assuming the obligation to provide such Maintenance and Support Services, which may result in the District’s termination of the Contract for default in accordance with Paragraph 11.44 (Termination for Default); or
- (4) Successor ceasing to do business with the District with respect to this Contract; or
- (5) A different hardware or operating system platform is established for the System and/or required for use of the System Software by the Contractor, without maintenance of the System Software residing in the District Environment, on the originally agreed equipment or operating system platform within the term of this Contract, other than due to the failure of the manufacturer of such platform to maintain and support same.

7.4.2.2 Upon occurrence of any of the Release Conditions, the Contractor shall ensure the release of the Deposited Source Code to the District. Any dispute that a Release Condition has occurred shall be subject to Dispute Resolution Procedures of this Contract.

#### **7.4.3 District's Right to Verify Source Code**

Regardless of whether one of the Release Conditions occurs, the District shall have the right, at the District's sole expense, to verify the relevance, completeness, currency, accuracy and functionality of the Deposited Source Code by, among other things, compiling the Deposited Source Code and performing test runs for comparison with the applicable System Software. Verification shall be performed by a third party (which may include the Source Code Escrow company) that is bound by a confidentiality agreement that prohibits it from disclosing the Deposited Source Code to the District or any third party in conjunction with the verification process. In the event such testing demonstrates that the Deposited Source Code does not correspond to the applicable System Software operated by the District and maintained by the Contractor, the Contractor shall reimburse the District for all costs and fees incurred in the testing and immediately deposit the correct Source Code in Source Code Escrow.

#### **7.4.4 Possession and Use of Deposited Source Code**

Upon the occurrence of a Release Condition, the District shall be entitled to obtain the Deposited Source Code from the Source Code Escrow pursuant to the terms of any Source Code Escrow Agreement or Paragraph 7.4.2 (Source Code Release Conditions). The District shall be entitled to use the Deposited Source Code as needed to remedy the event of release and mitigate any damages arising from such event, provided that mitigation of damages shall not include the sale or sublicense of the Deposited Source Code. Such use will include, but not be limited to, the District's right to perform its own support and maintenance, alter or modify the Deposited Source Code and/or obtain the benefits sought under this Contract.

7.4.5 Deposited Source Code obtained by the District pursuant to this Contract shall remain subject to license restrictions and other District obligations specified in this Contract and the District's License to the System Software; provided that the District may make such Deposited Source Code available to third parties as needed in assist it in making authorized use of the System. Any possession of the Deposited Source Code as referred to herein is subject to the confidentiality and proprietary provisions of access to any third party. Should use of the Deposited Source Code as provided herein involve the use of practice of any patent, copyright, trade secret, trademark or other proprietary information in which the Contractor has an interest, the Contractor, on behalf of itself and its assignees and successors, agrees not to assert a claim for patent, copyright, trade secret, trademark or other proprietary information infringement against the

District or any User provided use of System Software and Deposited Source Code is in accordance with this Contract.

## 7.5 Work Product and Background Intellectual Property

7.5.1 “**Work Product**” expressly excludes System Software (the license to which is provided in Section 7.2 (License)) Third Party Software (the license to which is provided in Section 7.3 (Third Party Software)), and District Data (which is addressed in Section 8.1.2 (District Data)) and shall mean:

(a) all Deliverables and all concepts, inventions (whether or not protected under patent laws), works of authorship, information, new or useful art, combinations, discoveries, formulae, algorithms, specifications, manufacturing techniques, technical developments, systems, computer architecture, artwork, scripts, designs, procedures, processes, and methods of doing business, regardless of form or media, Documentation, training materials, and shall include any derivatives or modifications to any of the foregoing (collectively “**Class 1 Work Product**”); and

(b) District project management documents and reports, including the Project Implementation Plan, project work plans, and risk reports (“**Class 2 Work Product**”),

developed or produced by Contractor under this Contract, whether acting alone or in conjunction with District or its employees, Users, affiliates, or others.

### 7.5.2 Ownership

All Class 1 Work Product is the sole and exclusive property of Contractor. Contractor may use such Class 1 Work Product for internal purposes as well as for other clients so long as Contractor does not use any Confidential Information belonging to District or otherwise breach this Contract. However, to the extent Class 1 Work Product constitutes or is incorporated into any Deliverables or Services or needed for the use of the Deliverables or Services, Contractor hereby grants to District a perpetual, irrevocable, fully paid up, royalty free, transferable, sub-licensable, worldwide, non-exclusive right and license to use, prepare derivative works, and otherwise fully exploit in connection with District’s business purposes and activities, the Class 1 Work Product (and derivative works thereof created by District), provided that the Class 1 Work Product (and/or derivative works thereof) is used in a manner that does not violate its license rights under this Contract and is not commercially exploited in a manner inconsistent with its license right.

All Class 2 Work Product is the sole and exclusive property of the District. The District hereby grants to the Contractor a limited, nonexclusive, nontransferable, nonsublicensable license during the term of this Contract to use the Class 2 Work Product solely as required to provide the System and Services.

## 8.0 CONFIDENTIALITY AND SECURITY

**8.1 Confidentiality** In addition to the confidentiality and security provisions in this Section 8.0, the Contractor shall comply with the provisions of Exhibit M (Information and Privacy Security Requirements).

8.1.1 The Contractor shall maintain the confidentiality of all records and information including, but not limited to, billing and sensitive financial information, District records, data and information, Personal Data as defined below, health information and any other data, records and information, received, obtained and/or produced under the provisions of this Contract (collectively, "Confidential Information"), in accordance with the terms of this Contract and all applicable Federal, State or local laws, regulations, ordinances, publicly known guidelines and directives relating to confidentiality, and the District's policies concerning information technology security. Each party shall use whatever appropriate security measures are necessary to protect such Confidential Information from loss, damage and/or unauthorized dissemination by any cause, including but not limited to fire and theft. On the District's written request or upon expiration or termination of this Contract for any reason, the Contractor will promptly: (a) return or destroy, at the District's option, all originals and copies of all documents and materials it has received containing the District's Confidential Information and District Data; and (b) deliver or destroy, at the District's option, all originals and copies of all summaries, records, descriptions, modifications, negatives, drawings, adoptions and other documents or materials, whether in writing or in machine-readable form, prepared by the Contractor, prepared under its direction, or at its request from the documents and materials referred to in subparagraph (a), and provide a notarized written statement to the District certifying that all documents and materials referred to in subparagraphs (a) and (b) have been delivered to the District or destroyed, as requested by the District.

### 8.1.2 District Data

All of the District's Confidential Information, data, records, and information of District to which Contractor has access, or otherwise provided to the Contractor under this Contract ("District Data"), shall be and remain the property of the District and the District shall retain exclusive rights and ownership thereto. The data of the District shall not be used by the Contractor for any purpose other than as required under this Contract, nor shall such data or any part of such data be disclosed, sold, assigned, leased, or otherwise disposed of to third parties by the Contractor or commercially exploited or otherwise used by or on behalf of the Contractor, its officers, directors, employees, or agents.

### 8.1.3 Personal Data

In performing its obligations under the Contract, including providing the Services and the System, the Contractor may be provided or obtain, from the District or otherwise, Personal Data, as defined below, pertaining to the District's current

and prospective patients, personnel, directors and officers, Users, agents, subcontractors, investors, and customers and may need to process such Personal Data and/or transfer it, all subject to the restrictions set forth in this Contract and otherwise in compliance with all applicable foreign and domestic laws and regulations for the sole purpose of performing the Work.

#### 8.1.2.1 Treatment of Personal Data

Without limiting any other warranty or obligation specified in this Contract, and in particular the confidentiality provisions of this Paragraph 8.1 (Confidentiality), during the term of this Contract and thereafter in perpetuity, the Contractor will not gather, store, log, archive, use, or otherwise retain any Personal Data in any manner and will not disclose, distribute, sell, share, rent, or otherwise transfer any Personal Data to any third party, except as expressly required to perform its obligations in this Contract or as the Contractor may be expressly directed in advance in writing by District. The Contractor represents and warrants that Contractor will use and process Personal Data only in compliance with (a) this Contract, (b) the District's then current privacy policy, and (c) all applicable local, state, and federal laws and regulations (including, but not limited to, current and future laws and regulations relating to spamming, privacy, confidentiality, data security, and consumer protection).

#### 8.1.2.2 Retention of Personal Data

The Contractor will not retain any Personal Data for any period longer than necessary for the Contractor to fulfill its obligations under this Contract. As soon as the Contractor no longer needs to retain such Personal Data in order to perform its duties under this Contract, the Contractor will promptly return, destroy, or erase all originals and copies of such Personal Data.

## 8.2 Security

### 8.2.1 Security in General

The Contractor will maintain and enforce safety and physical security procedures with respect to its access, use, and possession of the District's Confidential Information, including Personal Data, and all other data owned by the District and accessible by the Contractor under this Contract, (a) that are compliant with the requirements of Exhibit A (Statement of Work) and, to the extent not inconsistent, at least equal to industry standards for such types of locations, (b) that are in accordance with the District's security requirements, and (c) which provide reasonably appropriate technical and organizational safeguards against accidental or unlawful destruction, loss, alteration, or unauthorized disclosure or access of such information. Without limiting the generality of the foregoing, the Contractor will take all reasonable measures to secure and defend its location

and equipment against “hackers” and others who may seek, without authorization, to modify or access the Contractor systems or the information found therein. The Contractor will periodically test its systems for potential areas where security could be breached. Without limiting the generality of the foregoing, all District Data must be stored in a physically and logically secure environment that protects it from unauthorized access, modification, theft, misuse, and destruction and must be securely transmitted between the local input device and the repository in a manner that prohibits unauthorized interception or viewing and complies with all federal HIPAA and District information security requirements.

#### 8.2.2 Security Breaches

In addition to, and without limiting, Contractor’s obligations under Exhibit C (Service Level and Support Requirements), the Contractor will as soon as practical (but not to exceed forty (40) business hours) report to the District any breaches of security or unauthorized access to the District’s Confidential Information, including Personal Data, that the Contractor detects or becomes aware of. The Contractor will use diligent efforts to remedy such breach of security or unauthorized access in a timely manner and deliver to the District a root cause assessment and future incident mitigation plan with regard to any breach of security or unauthorized access affecting the Confidential Information, including Personal Data. The Contractor shall provide the District all written details regarding the Contractor’s internal investigation regarding any security breach. Upon the District’s request, the Contractor will provide a second more in-depth investigation and results of findings. The Contractor agrees not to notify any regulatory authority nor any customer or consumer, on behalf of the District unless the District specifically requests in writing that the Contractor do so. The Contractor and District will work together to formulate a plan to rectify all security breaches.

#### 8.2.3 Communication Systems and Access to Information

During the term of this Contract, the Contractor may receive access to the District Environment and District’s software, computers, equipment, and electronic communications systems (“District Systems”), including but not limited to voicemail, email, customer databases, and internet and intranet systems. Such District Systems are intended for legitimate business use related to the District’s business. The Contractor acknowledges that the Contractor does not have any expectation of privacy as between the Contractor and District in the use of or access to the District Systems and that all communications made with such District Systems or equipment by or on behalf of the Contractor are subject to the District’s scrutiny, use, and disclosure, in the District’s discretion. The District reserves the right, for business purposes and activities, to monitor, review, audit, intercept, access, archive, and/or disclose materials sent over, received by or from, or stored in any of its electronic District Systems. This includes, without limitation, email communications sent by users across the internet and intranet

from and to any domain name owned or operated by the District. This also includes, without limitation, any electronic communication system that has been used to access any of District Systems. The Contractor further agrees that the Contractor will use all appropriate security, such as, for example, encryption and passwords (the Contractor must provide passwords and keys to the District), to protect the District's Confidential Information from unauthorized disclosure (internally or externally) and that the use of such security does not give rise to any privacy rights in the communication as between the Contractor and District. The District reserves the right to override any security passwords to obtain access to voicemail, email, computer (and software or other applications) and/or computer disks on District Systems. The Contractor also acknowledges that the District reserves the right, for any business purposes and activities, to search all work areas (e.g., offices, cubicles, desks, drawers, cabinets, computers, computer disks, and files) and all personal items brought onto District property or used to access District Confidential Information or District Systems.

#### 8.2.4 Unauthorized Access

In the course of furnishing the Work, the Contractor shall not access, and shall not permit Contractor Personnel or entities within its control to access, District Systems without the District's express written authorization. Such written authorization may subsequently be revoked by the District at any time in its sole discretion. Further, any access shall be consistent with, and in no case exceed the scope of, any such authorization given by the District. All District authorized connectivity or attempted connectivity to District Systems shall be only through the District's security gateways and/or firewalls, and in conformity with applicable District security policies.

#### 8.2.5 Contractor Systems

The Contractor shall be solely responsible for all systems the Contractor uses to access District Systems and all systems used to provide the System and Services. The Contractor shall ensure that all such systems include up-to-date anti-viral software to prevent viruses from reaching District Systems through Contractor's systems. The Contractor shall prevent unauthorized access to District Systems through Contractor systems. Further, the Contractor shall ensure Contractor Personnel do not use any virtual private network or other device (VPN) to simultaneously connect machines on any District Systems to any machines on any Contractor or third-party systems, without (a) using only a remote access method approved in writing and in advance by the District; (b) providing the District with the full name of each individual who uses any such VPN and the phone number at which the individual may be reached while using the VPN; and (c) ensuring that any computer used by Contractor personnel to remotely access any District Systems will not simultaneously access the Internet or any other third-party network while logged on to District Systems.

#### 8.2.6 Data Breach

In addition to, and without limiting, Contractor's obligations under Exhibit C (Service Level and Support Requirements), the Contractor shall notify the District of any security, or suspected security, breach of the District's Confidential Information or data covered under applicable federal regulations set forth in 12 C.F.R. Part 30, or under California Civil Code 1798.82, or any other breach of Confidential Information immediately following discovery, if the information was, or is reasonably believed to have been acquired by an unauthorized person. Notification must be given in the most expedient time possible and without unreasonable delay. Written confirmation must be sent within five (5) business days of discovery or notification of the breach or suspected breach.

#### **8.2.7 Additional Procedures In The Event Of Breach Of Personal Data**

Upon the District's determination that a misuse or security breach of Personal Data has occurred or is reasonably possible, the Contractor shall fully cooperate with the District in rectifying any misuse, including notifying all affected individuals. The District shall determine, in its sole discretion, the content and means of delivery of the customer notice. The Contractor will bear all costs and expenses incurred as a result of security breach caused directly or indirectly by the Contractor, including but not limited to, the administrative cost of opening and closing accounts, notice, print and mailing, and obtaining credit monitoring services and identity theft insurance for individuals whose Personal Data has or may have been compromised.

#### **8.2.8 Additional Procedures For Identification Of Possible Instances Of Identity Theft**

The Contractor acknowledges that the District has certain obligations to identify patterns, practices, and specific forms of activity that indicate the possible existence of identity theft (defined as fraud committed using the identifying information of another person), pursuant to Section 114 of the Fair and Accurate Credit Transactions Act of 2003 and its implementing regulations promulgated by the Office of the Comptroller of the Currency, 12, C.F.R. Part 41. The Contractor, to the extent that it holds or otherwise has access to Personal Data, agrees to establish, maintain and update reasonably effective policies and procedures to detect, prevent, and mitigate the risk of identity theft, and to promptly notify and report to the District upon request, any instances where the Contractor detects potential identity theft in the course of its duties pursuant to this Contract. The Contractor further agrees to immediately report to the District any confirmed instances of identity theft. In furtherance thereof, the Contractor agrees to be guided by the examples of identity theft "Red Flags" (defined as a pattern, practice, or specific activity that indicates the possible existence of identity theft) set forth in Supplement A to Appendix J to 12 C.F.R. Part 41. Upon request by the District, the Contractor agrees to confirm in writing and, when specified, demonstrate to the District its compliance with the requirements of this Paragraph 8.2 (Security).

### **8.3 The Contractor shall indemnify, defend, and hold harmless the District, its officers, employees, and agents, from and against any and all claims, demands, damages,**



liabilities, losses, costs and expenses, including, without limitation, defense costs and legal, accounting and other expert, consulting, or professional fees, arising from, connected with, or related to any failure by the Contractor, its officers, employees, agents, or subcontractors, to comply with this Paragraph 8.0 as determined by the District in its sole judgment. Any legal defense pursuant to the Contractor's indemnification obligations under this Paragraph 8.0 shall be conducted by the Contractor and performed by counsel selected by the Contractor and approved by the District. Notwithstanding the preceding sentence, the District shall have the right to participate in any such defense at its sole cost and expense, except that in the event the Contractor fails to provide the District with a full and adequate defense, as determined by the District in its sole judgment, the District shall be entitled to retain its own counsel, including, without limitation, County Counsel, and reimbursement from the Contractor for all such costs and expenses incurred by the District in doing so. The Contractor shall not have the right to enter into any settlement, agree to any injunction, or make any admission, in each case, on behalf of the District without the District's prior written approval.

- 8.4** The Contractor shall inform all of its officers, employees, agents and subcontractors providing services hereunder of the confidentiality provisions of this Contract. The Contractor shall ensure that all of its officers, employees, agents and subcontractors performing Work hereunder have entered into confidentiality agreements no less protective of the District than the terms of this Contract.

#### **8.5 Data Return**

Upon termination or expiration of the Contract for any reason, or upon the District's written request at any time, the Contractor shall provide the District, at no additional charge, within the time frame set forth in Exhibit C (Service Level and Support Requirements) but in no event more than thirty (30) calendar days after the termination, expiration or District's request, any District Data (including any District data or information stored as part of the System) or other proprietary data belonging to the District stored within the System. Such data will be provided to the District on an external media drive in a platform-agnostic format or in any specific format reasonably requested by the District. At the District's option, the Contractor shall destroy all originals and copies of all such District Data, and other related information or documents.

#### **8.6 Non-Exclusive Equitable Remedy**

Each party acknowledges and agrees that due to the unique nature of Confidential Information there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach or threatened breach may allow a party or third-parties to unfairly compete with the other party resulting in irreparable harm to such party, and therefore, that upon any such breach or any threat thereof, each party will be entitled to appropriate equitable remedies, and may seek injunctive relief from a court of competent jurisdiction without the necessity of proving actual loss, in addition to

whatever remedies either of them might have at law or equity. Any breach of this Section 8 (Confidentiality and Security) shall constitute a material breach of this Contract and be grounds for immediate termination of this Contract in the exclusive discretion of the non-breaching party.

## **9.0 ADMINISTRATION OF CONTRACT - DISTRICT**

A listing of all District personnel responsible for the administration of this Contract (District's Administration) referenced in the following sub-paragraphs are designated in Exhibit D - District's Administration. The District shall notify the Contractor in writing of any change in the names or addresses shown. No member of the District's Administration is authorized to make any changes in any of the terms and condition of this Contract unless specifically authorized in Paragraph 11.1 (Change Notices and Amendments). The District shall inform the Contractor in writing of any change in the names or address shown.

### **9.1 District's Project Director**

- The District's Project Director will be responsible for confirming that the objectives of this Contract are met. The District's Project Director will also be responsible for providing direction to the Contractor in the areas relating to the District's policy, information requirements, and procedural requirements. The District's Project Director will have the right at all times to inspect any and all Work provided by or on behalf of the Contractor.

### **9.2 District's Project Manager**

The District's Project Manager will have the responsibility to oversee the day-to-day activities of the Contract and may inspect any and all tasks, deliverables, goods, services and other work provided by the Contractor under the Contract. The responsibilities of the District's Project Manager include:

- meeting with the Contractor's Project Manager on a regular basis; and
- inspecting any and all tasks, deliverables, goods, services, or other work provided by or on behalf of the Contractor.

The District's Project Manager reports to the District's Project Director.

### **9.3 District Personnel**

All District personnel assigned to this Contract shall be under the exclusive supervision of the District. The Contractor understands and agrees that all such District personnel are assigned only for the convenience of the District.

### **9.4 Responsibilities**

The District will administer the Contract according to the Contract, Paragraph 9.0, Administration of Contract - District. Specific duties will include:

- Monitoring the Contractor's performance in the daily operation of this Contract.
- Providing direction to the Contractor in areas relating to policy, information and procedural requirements.
- Preparing Amendments in accordance with the Contract, Paragraph 11.1, (Change Notices and Amendments).
- Providing essential personnel to assist in project implementation.
- Providing needed internal facilities for the completion of the implementation phase of the project, however, all request for facilities shall limited to an as-needed-basis and shall be temporary. Request for facilities shall only be honored on an essential need only and as determined by the District.

## **9.5 District Training Section**

The following items outline the Districts responsibilities regarding Implementation Training and ongoing In-Service Training of District's personnel.

- The Contractor shall work with the District's designee to develop training concepts and strategies that will become part of the comprehensive training plan for the District.
- The District shall provide a pre-agreed number of personnel to be trained as trainers for the proposed system.
- It is required for the contractor to use video and web technology to deliver training in addition to hands-on training. The District will work with the contractor to develop video and web-based technology that is specific to the District's needs.
- The District will supplement needed personnel for training when conditions warrant such need.

## **10.0 ADMINISTRATION OF CONTRACT - CONTRACTOR**

A listing of all Contractor personnel responsible for the administration of the Contract on behalf of the Contractor (Contractor's Administration) is set forth in Exhibit E (Contractor's Administration). No member of the Contractor's Administration is authorized to make any changes in any of the terms and conditions of this Contract unless specifically authorized under Paragraph 11.1 (Change Notices and Amendments). The Contractor shall notify the District in writing of any change in the names or addresses shown.

### **10.1 Contractor's Project Director**

- 10.1.1 The Contractor's Project Director will be responsible for the Contractor's performance of all of the Services and ensuring the Contractor's compliance with this Contract.
- 10.1.2 The Contractor's Project Director will be available to meet with the District's Project Director or District's Project Manager, as determined by the District's Project Director, to discuss performance of the Services and/or compliance with this Contract.

## **10.2 Contractor's Project Manager**

- 10.2.1 The Contractor's Project Manager is designated in Exhibit E - Contractor's Administration.
- 10.2.2 The Contractor's Project Manager shall be responsible for the Contractor's day-to-day activities as related to this Contract and shall coordinate with the District's Project Manager and District's Contract Project Monitor on a regular basis.
- 10.2.3 The Contractor's Project Manager must have five (5) years of experience and shall be **solely dedicated to the District.**

## **10.3 Approval of Contractor's Staff**

- 10.3.1 The District has the absolute right to approve or disapprove all of the Contractor's staff performing Services hereunder and any proposed changes in the Contractor's staff, including, but not limited to, the Contractor's Project Manager. The District's Project Director has the right to approve or disapprove any proposed replacement. The District shall not unreasonably delay its approval of a replacement.
- 10.3.2 The Contractor shall use best efforts to assure continuity during the Contract's term of Contractor personnel performing key functions under this Contract. Notwithstanding the foregoing, the District's Project Director may require removal of any member of the Contractor's staff, including subcontractor staff (if any), performing, or offering to perform, Services hereunder.

## **10.4 Contractor's Staff Identification**

The Contractor shall provide, at the Contractor's expense, all staff providing Services under this Contract with a photo identification badge.

## **10.5 Background and Security Investigations**

- 10.5.1 Each and all of the Contractor's staff performing Services under this Contract who is in a designated sensitive position, as determined by the District in the District's sole discretion, shall undergo and pass a background investigation to the satisfaction of the District as a condition of beginning and continuing to

perform Services under this Contract. Such background investigation must be obtained through fingerprints submitted to the California Department of Justice to include State, local, and federal-level review, which may include, but shall not be limited to, criminal conviction information. The fees associated with the background investigation shall be at the expense of the Contractor, regardless of whether the member of the Contractor's staff passes or fails the background investigation.

10.5.2 If a member of the Contractor's staff does not pass the background investigation, the District may, in its sole discretion, request that said member of the Contractor's staff be immediately removed from performing Services under the Contract at any time during the term of the Contract. The District will not provide to the Contractor or to the Contractor's staff any information obtained through the background investigation.

10.5.3 The District, in its sole discretion, may immediately deny or terminate facility access to any member of the Contractor's staff that does not pass such investigation to the satisfaction of the District or whose background or conduct is incompatible with District facility access.

10.5.4 Disqualification of any member of the Contractor's staff pursuant to this Paragraph 10.5 shall not relieve the Contractor of its obligation to complete all Services in accordance with the terms and conditions of this Contract.

## **10.6 Reports by Contractor**

In order to control expenditures and to ensure the reporting of all goods, Services, and other work provided by the Contractor, the Contractor shall provide to the District's Project Manager, written weekly which shall include, at a minimum, the following information:

- Period covered by the report;
- Overview of the reporting period;
- Tasks, deliverables, goods, Services and other work scheduled for the reporting period which were completed;
- Tasks, deliverables, goods, Services and other work scheduled for the reporting period which were not completed;
- Tasks, deliverables, goods, Services and other work not scheduled but completed in the reporting period;
- Tasks, deliverables, goods, Services and other work scheduled to be completed in the next reporting period;
- Issues resolved;
- Issues to be resolved;
- Summary of project status as of reporting date;
- Updated milestone chart;

- Any other information that the District may from time-to-time require.

## **11.0 STANDARD TERMS AND CONDITIONS**

### **11.1 CHANGE NOTICES AND AMENDMENTS**

No representative of either the District or Contractor, including those named in this Contract, is authorized to make any changes in any of the terms, obligations or conditions of this Contract, except through the procedures set forth in this Paragraph 11.1. The District reserves the right to change any portion of the Services required under this Contract and to any other provisions of this Contract. All such changes shall be accomplished only as provided in this Paragraph 11.1.

- 11.1.1. For any change requested by the District, which is clerical or administrative in nature and/or does not affect the scope of Services , period of performance, payments, or any other term or condition of this Contract, a written notice of such change ("Change Notice") shall be prepared and executed by the District's Project Director.
- 11.1.2 For any change that affects the scope of work, period of performance, contract sum, payments, or any term or condition included under this Contract, a written amendment ("Amendment") shall be negotiated executed by the Contractor and by the Fire Chief or his designee, as authorized by the Board of Supervisors.
- 11.1.3 The Board of Supervisors or the Chief Executive Officer of the County of Los Angeles ("Chief Executive Officer") or designee may require the addition and/or change of certain terms and conditions in the Contract during the term of this Contract. The District reserves the right to add and/or change such provisions as required by the Board of Supervisors or the Chief Executive Officer. To implement such changes, an Amendment to the Contract shall be prepared and executed by the Contractor and by the Fire Chief or his authorized designee.
- 11.1.4 The Fire Chief or his designee, may at his sole discretion, authorize extensions of time as defined in Paragraph 4.0 (Term of Contract). The Contractor agrees that such extensions of time shall not change any other term or condition of this Contract during the period of such extensions. To implement an extension of time, an Amendment to the Contract shall be prepared and executed by the Contractor and by the Fire Chief or his authorized designee.

### **11.2 ASSIGNMENT AND DELEGATION**

- 11.2.1 The Contractor shall not assign its rights or delegate its duties under this Contract, or both, whether in whole or in part, without the prior written consent of the District, in its discretion, and any attempted assignment or delegation without such consent shall be null and void. For purposes of this sub-paragraph, the District consent shall require a written Amendment to the Contract, which is

formally approved and executed by the parties. Any payments by the District to any approved delegate or assignee on any claim under this Contract shall be deductible, at the District's sole discretion, against the claims, which the Contractor may have against the District.

11.2.2 Shareholders, partners, members, or other equity holders of the Contractor may transfer, sell, exchange, assign, or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment, or divestment is effected in such a way as to give majority control of the Contractor to any person(s), corporation, partnership, or legal entity other than the majority controlling interest therein at the time of execution of the Contract, such disposition is an assignment requiring the prior written consent of the District in accordance with applicable provisions of this Contract.

11.2.3 Any assumption, assignment, delegation, or takeover of any of the Contractor's duties, responsibilities, obligations, or performance of same by any entity other than the Contractor, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without the District's express prior written approval, shall be a material breach of the Contract which may result in the termination of this Contract. In the event of such termination, the District shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of default by the Contractor.

### **11.3 AUTHORIZATION WARRANTY**

The Contractor represents and warrants that the person executing this Contract for the Contractor is an authorized agent who has actual authority to bind the Contractor to each and every term, condition, and obligation of this Contract and that all requirements of the Contractor have been fulfilled to provide such actual authority.

### **11.4 BUDGET REDUCTIONS**

In the event that the Board of Supervisors adopts, in any fiscal year, a District Budget which provides for reductions in the salaries and benefits paid to the majority of District employees and imposes similar reductions with respect to District contracts, the District reserves the right to reduce its payment obligation under this Contract correspondingly for that fiscal year and any subsequent fiscal year during the term of this Contract (including any extensions), and the Services to be provided by the Contractor under this Contract shall also be reduced correspondingly. The District's notice to the Contractor regarding said reduction in payment obligation shall be provided within thirty (30) calendar days of the Board's approval of such actions. Except as set forth in the preceding sentence, the Contractor shall continue to provide all of the Services set forth in this Contract.

### **11.5 COMPLAINTS**

The Contractor shall develop, maintain and operate procedures for receiving, investigating and responding to complaints.

- 11.5.1 Within ten (10) business days after the Contract Effective Date, the Contractor shall provide the District with the Contractor's policy for receiving, investigating and responding to user complaints.
- 11.5.2 The District will review the Contractor's policy and provide the Contractor with Approval of said plan or with requested changes.
- 11.5.3 If the District requests changes in the Contractor's policy, the Contractor shall make such changes and resubmit the plan within five (5) business days for District Approval.
- 11.5.4 If, at any time, the Contractor wishes to change the Contractor's policy, the Contractor shall submit proposed changes to the District for Approval before implementation.
- 11.5.5 The Contractor shall preliminarily investigate all complaints and notify the District's Project Manager of the status of the investigation within five (5) business days of receiving the complaint.
- 11.5.6 When complaints cannot be resolved informally, a system of follow-through shall be instituted which adheres to formal plans for specific actions and strict time deadlines.
- 11.5.7 Copies of all written responses shall be sent to the District's Project Manager within three (3) business days of mailing to the complainant.

## **11.6 COMPLIANCE WITH APPLICABLE LAW**

- 11.6.1 In the performance of this Contract, the Contractor shall comply with all applicable Federal, State and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures, and all provisions required thereby to be included in this Contract are hereby incorporated herein by reference.
- 11.6.2 The Contractor shall indemnify, defend, and hold harmless the District, its officers, employees, and agents, from and against any and all third party claims, demands, damages, liabilities, losses, costs, and expenses, including, without limitation, defense costs and legal, accounting and other expert, consulting or professional fees, arising from, connected with, or related to any failure by the Contractor, its officers, employees, agents, or subcontractors, to comply with any such laws, rules, regulations, ordinances, directives, guidelines, policies, or procedures. Any legal defense pursuant to the Contractor's indemnification obligations under this Paragraph shall be conducted by the Contractor and performed by counsel selected by the Contractor and approved by the District. Notwithstanding the preceding sentence, the District shall have the right to participate in any such defense at its sole cost and expense, except that in the



event the Contractor fails to provide the District with a full and adequate defense, as determined by the District in its sole judgment, the District shall be entitled to retain its own counsel, including, without limitation, County Counsel, and reimbursement from the Contractor for all such costs and expenses incurred by the District in doing so. The Contractor shall not have the right to enter into any settlement, agree to any injunction or other equitable relief, or make any admission, in each case, on behalf of the District without the District's prior written approval.

## **11.7 COMPLIANCE WITH CIVIL RIGHTS LAWS**

The Contractor hereby assures that it will comply with Subchapter VI of the Civil Rights Act of 1964, 42 USC Sections 2000 (e) (1) through 2000 (e) (17), to the end that no person shall, on the grounds of race, creed, color, sex, religion, ancestry, age, condition of physical handicap, marital status, political affiliation, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract. The Contractor shall comply with Exhibit G (Contractor's EEO Certification).

## **11.8 COMPLIANCE WITH THE COUNTY'S JURY SERVICE PROGRAM**

### **11.8.1 Jury Service Program:**

As provided in Chapter 2.203 of the County Code, for purposes of Paragraph 11.8, "County" shall mean the County of Los Angeles, any public entities for which the Board of Supervisors is the governing body, including the District, and any joint powers authorities of which the County is a member that have adopted County contracting procedures. This Contract is subject to the provisions of the County's ordinance entitled Contractor Employee Jury Service ("Jury Service Program") as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code, a copy of which is attached as Exhibit H and incorporated by reference into and made a part of this Contract.

### **11.8.2 Written Employee Jury Service Policy.**

1. Unless the Contractor has demonstrated to the District's satisfaction either that the Contractor is not a "Contractor" as defined under the Jury Service Program (Section 2.203.020 of the County Code) or that the Contractor qualifies for an exception to the Jury Service Program (Section 2.203.070 of the County Code), the Contractor shall have and adhere to a written policy that provides that its Employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that Employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the Employee's regular pay the fees received for jury service.

2. For purposes of this sub-paragraph, "Contractor" means a person, partnership, corporation or other entity which has a contract with the County or a subcontract with a County Contractor and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more County contracts or subcontracts. "Employee" means any California resident who is a full-time employee of the Contractor. "Full-time" means 40 hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by the District, or 2) Contractor has a long-standing practice that defines the lesser number of hours as full-time. Full-time employees providing short-term, temporary services of 90 days or less within a 12-month period are not considered full-time for purposes of the Jury Service Program. If the Contractor uses any Subcontractor to perform services for the District under the Contract, the Subcontractor shall also be subject to the provisions of this sub-paragraph. The provisions of this sub-paragraph shall be inserted into any such subcontract agreement and a copy of the Jury Service Program shall be attached to the agreement.
3. If the Contractor is not required to comply with the Jury Service Program when the Contract commences, the Contractor shall have a continuing obligation to review the applicability of its "exception status" from the Jury Service Program, and the Contractor shall immediately notify the District if the Contractor at any time either comes within the Jury Service Program's definition of "Contractor" or if the Contractor no longer qualifies for an exception to the Jury Service Program. In either event, the Contractor shall immediately implement a written policy consistent with the Jury Service Program. The District may also require, at any time during the Contract and at its sole discretion, that the Contractor demonstrate, to the District's satisfaction that the Contractor either continues to remain outside of the Jury Service Program's definition of "Contractor" and/or that the Contractor continues to qualify for an exception to the Program.
4. The Contractor's violation of this sub-paragraph of the Contract may constitute a material breach of the Contract. In the event of such material breach, the District may, in its sole discretion, terminate the Contract and/or bar the Contractor from the award of future District contracts for a period of time consistent with the seriousness of the breach.

## **11.9 CONFLICT OF INTEREST**

- 11.9.1 No District employee whose position with the District enables such employee to influence the award of this Contract or any competing contract, and no spouse or economic dependent of such employee, shall be employed in any capacity by the Contractor or have any other direct or indirect financial interest in this Contract. No officer or employee of the Contractor who may financially benefit from the performance of work hereunder shall in any way participate in the

District's approval, or ongoing evaluation, of such work, or in any way attempt to unlawfully influence the District's approval or ongoing evaluation of such work.

11.9.2 The Contractor shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Contract. The Contractor warrants that it is not now aware of any facts that create a conflict of interest. If the Contractor hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to the District. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this sub-paragraph shall be a material breach of this Contract.

#### **11.10 CONSIDERATION OF HIRING COUNTY EMPLOYEES TARGETED FOR LAYOFF/OR RE-EMPLOYMENT LIST**

Should the Contractor require additional or replacement personnel after the effective date of this Contract to perform the services set forth herein, the Contractor shall give first consideration for such employment openings to qualified, permanent County employees who are targeted for layoff or qualified, former County employees who are on a re-employment list during the life of this Contract.

#### **11.11 CONSIDERATION OF HIRING GAIN/GROW PROGRAM PARTICIPANTS**

11.11.1 Should the Contractor require additional or replacement personnel after the effective date of this Contract, the Contractor shall give consideration for any such employment openings to participants in the County's Department of Public Social Services Greater Avenues for Independence (GAIN) Program or General Relief Opportunity for Work (GROW) Program who meet the Contractor's minimum qualifications for the open position. For this purpose, consideration shall mean that the Contractor will interview qualified candidates. The County will refer GAIN/GROW participants by job category to the Contractor.

11.11.2 In the event that both laid-off County employees and GAIN/GROW participants are available for hiring, County employees shall be given first priority.

#### **11.12 CONTRACTOR RESPONSIBILITY AND DEBARMENT**

##### **11.12.1 Responsible Contractor**

A responsible Contractor is a contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is the District's policy to conduct business only with responsible contractors.

##### **11.12.2 Chapter 2.202 of the County Code**

As provided in Chapter 2.202 of the County Code, for purposes of Paragraph 11.12, "County" shall mean the County of Los Angeles, any public entities for which the Board of Supervisors is the governing body, including the District, and any joint powers authorities of which the County is a member that have adopted County contracting procedures.

The Contractor is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the County acquires information concerning the performance of the Contractor on this or other contracts which indicates that the Contractor is not responsible, the County may, in addition to other remedies provided in the Contract, debar the Contractor from bidding or proposing on, or being awarded, and/or performing work on County contracts for a specified period of time, which generally will not exceed five years but may exceed five years or be permanent if warranted by the circumstances, and terminate any or all existing Contracts the Contractor may have with the County.

#### **11.12.3 Non-responsible Contractor**

The County may debar the Contractor if the Board of Supervisors finds, in its discretion, that the Contractor has done any of the following: (1) violated a term of a contract with the County or a nonprofit corporation created by the County, (2) committed an act or omission which negatively reflects on the Contractor's quality, fitness or capacity to perform a contract with the County, any other public entity, or a nonprofit corporation created by the County, or engaged in a pattern or practice which negatively reflects on same, (3) committed an act or offense which indicates a lack of business integrity or business honesty, or (4) made or submitted a false claim against the County or any other public entity.

#### **11.12.4 Contractor Hearing Board**

1. If there is evidence that the Contractor may be subject to debarment, the District will notify the Contractor in writing of the evidence which is the basis for the proposed debarment and will advise the Contractor of the scheduled date for a debarment hearing before the Contractor Hearing Board.
2. The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The Contractor and/or the Contractor's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a tentative proposed decision, which shall contain a recommendation regarding whether the Contractor should be debarred, and, if so, the appropriate length of time of the debarment. The Contractor and the District shall be provided an opportunity to object to the tentative proposed decision prior to its presentation to the Board of Supervisors.
3. After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision, and any other

recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

4. If a Contractor has been debarred for a period longer than five (5) years, that Contractor may after the debarment has been in effect for at least five (5) years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. The County may, in its discretion, reduce the period of debarment or terminate the debarment if it finds that the Contractor has adequately demonstrated one or more of the following: (1) elimination of the grounds for which the debarment was imposed; (2) a bona fide change in ownership or management; (3) material evidence discovered after debarment was imposed; or (4) any other reason that is in the best interests of the County.
5. The Contractor Hearing Board will consider a request for review of a debarment determination only where (1) the Contractor has been debarred for a period longer than five (5) years; (2) the debarment has been in effect for at least five (5) years; and (3) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board will provide notice of the hearing on the request. At the hearing, the Contractor Hearing Board shall conduct a hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing shall be conducted and the request for review decided by the Contractor Hearing Board pursuant to the same procedures as for a debarment hearing.
6. The Contractor Hearing Board's proposed decision shall contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Contractor Hearing Board shall present its proposed decision and recommendation to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

#### **11.12.5 Subcontractors of Contractor**

This Paragraph 11.12 shall also apply to subcontractors of County contractors.

### **11.13 CONTRACTOR'S ACKNOWLEDGEMENT OF DISTRICT'S COMMITMENT TO THE SAFELY SURRENDERED BABY LAW**

The Contractor acknowledges that the District places a high priority on the implementation of the Safely Surrendered Baby Law. The Contractor understands that it is the District's policy to encourage all District Contractors to voluntarily post the County's

“Safely Surrendered Baby Law” poster in a prominent position at the Contractor’s place of business. The Contractor will also encourage its Subcontractors, if any, to post this poster in a prominent position in the Subcontractor’s place of business. The County’s Department of Children and Family Services will supply the Contractor with the poster to be used. Information on how to receive the poster can be found on the Internet at [www.babysafela.org](http://www.babysafela.org).

#### **11.14 CONTRACTOR’S WARRANTY OF ADHERENCE TO COUNTY’S CHILD SUPPORT COMPLIANCE PROGRAM**

11.14.1 The Contractor acknowledges that the District has established a goal of ensuring that all individuals who benefit financially from the District through Contract comply with their court-ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon the District and its taxpayers.

11.14.2 As required by the County’s Child Support Compliance Program (County Code Chapter 2.200) and without limiting the Contractor’s duty under this Contract to comply with all applicable provisions of law, the Contractor warrants that it is now in compliance and shall during the term of this Contract maintain in compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or Child Support Services Department Notices of Wage and Earnings Assignment for Child, Family or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section (b).

#### **11.15 DISTRICT’S QUALITY ASSURANCE PLAN**

The District or its agent will evaluate the Contractor’s performance under this Contract on not less than an annual basis. Such evaluation will include assessing the Contractor’s compliance with all Contract terms and conditions and performance standards. Contractor deficiencies which the District determines are severe or continuing and that may place performance of the Contract in jeopardy if not corrected will be reported to the Board of Supervisors.

The report will include improvement/corrective action measures taken by the District and the Contractor. If improvement does not occur consistent with the corrective action measures, the District may terminate this Contract or impose other penalties as specified in this Contract.

#### **11.16 DAMAGE TO DISTRICT FACILITIES, BUILDINGS OR GROUNDS**

11.16.1 The Contractor shall repair, or cause to be repaired, at its own cost, any and all damage to District facilities, buildings, or grounds caused by the Contractor or employees or agents of the Contractor. Such repairs shall be made immediately

after the Contractor has become aware of such damage, but in no event later than thirty (30) days after the occurrence.

- 11.16.2 If the Contractor fails to make timely repairs, the District may make any necessary repairs. All costs incurred by the District, as determined by the District, for such repairs shall be repaid by the Contractor by cash payment upon demand.

#### **11.17 EMPLOYMENT ELIGIBILITY VERIFICATION**

- 11.17.1 The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirements set forth in Federal and State statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal and State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, (P.L. 99-603), or as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by law.
- 11.17.2 The Contractor shall indemnify, defend, and hold harmless, the District, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the District or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

#### **11.18 FACSIMILE REPRESENTATIONS**

The District and the Contractor hereby agree to regard facsimile representations of original signatures of authorized officers of each party, when appearing in appropriate places on the Change Notices and Amendments prepared pursuant to sub-paragraphs 11.1, and received via communications facilities, as legally sufficient evidence that such original signatures have been affixed to Change Notices and Amendments to this Contract, such that the parties need not follow up facsimile transmissions of such documents with subsequent (non-facsimile) transmission of "original" versions of such documents.

#### **11.19 FAIR LABOR STANDARDS**

The Contractor shall comply with all applicable provisions of the Federal Fair Labor Standards Act and shall indemnify, defend, and hold harmless the District and its agents, officers, and employees from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to, the Federal Fair Labor Standards Act, for work performed by the Contractor's employees for which the District may be found jointly or solely liable.

## **11.20 FORCE MAJEURE**

- 11.20.1 Subject to the provisions of this Paragraph 11.20 (Force Majeure), neither party shall be liable for such party's failure to perform its obligations under and in accordance with this Contract, if such failure arises out of fires, floods, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by such party or any of such party's subcontractors), freight embargoes, or other similar events to those described above, but in every such case the failure to perform must be totally beyond the control and without any fault or negligence of such party (such events are referred to in this sub-paragraph as "force majeure events").
- 11.20.2 Notwithstanding the foregoing, a default by a subcontractor of the Contractor shall not constitute a force majeure event, unless such default arises out of causes beyond the control of both the Contractor and such subcontractor, and without any fault or negligence of either of them. In such case, the Contractor shall not be liable for failure to perform, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule. As used in this sub-paragraph, the term "subcontractor" and "subcontractors" mean subcontractors at any tier.
- 11.20.3 In the event the Contractor's failure to perform arises out of a force majeure event, the Contractor agrees to use commercially reasonable best efforts to obtain goods or services from other sources, if applicable, and to otherwise mitigate the damages and reduce the delay caused by such force majeure event. Notwithstanding the foregoing, a force majeure event (excluding general Internet or telecommunications failures or acts of District) shall not relieve the Contractor of its disaster recovery obligations or obligations to achieve required service levels. In the event such an event prevents the Contractor from achieving any service level, the service level remedies shall apply. Notwithstanding the foregoing, under no circumstances shall any delay or failure to perform be excused or forgiven (i) if the cause of the delay or failure could have been prevented or avoided by the exercise of all due diligence; or (ii) if the party whose performance is delayed or prevented fails to use all due diligence to promptly overcome or mitigate the delay or failure to perform.

## **11.21 GOVERNING LAW, JURISDICTION, AND VENUE**

This Contract shall be governed by, and construed in accordance with, the laws of the State of California. The Contractor agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Contract and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles.

## **11.22 INDEPENDENT CONTRACTOR STATUS**



- 11.22.1 This Contract is by and between the District and the Contractor and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between the District and the Contractor. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever.
- 11.22.2 The Contractor shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Contract all compensation and benefits. The District shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of the Contractor.
- 11.22.3 The Contractor understands and agrees that all persons performing work pursuant to this Contract are, for purposes of Workers' Compensation liability, solely employees of the Contractor and not employees of the District. The Contractor shall be solely liable and responsible for furnishing any and all Workers' Compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of the Contractor pursuant to this Contract.
- 11.22.4 The Contractor shall adhere to the provisions stated in Paragraph 8.1 - Confidentiality.

## **11.23 INDEMNIFICATION**

The Contractor shall indemnify, defend and hold harmless the County, its Special Districts, including the District, and its elected and appointed officers, employees, agents and volunteers ("District Indemnitees") from and against any and all liability, including but not limited to demands, claims, actions, fees, costs and expenses (including attorney and expert witness fees), arising from and/or relating to this Contract, except for such loss or damage arising from the sole negligence or willful misconduct of the District Indemnitees.

## **11.24 GENERAL PROVISIONS FOR ALL INSURANCE COVERAGE**

Without limiting the Contractor's indemnification of the District Indemnitees, and in the performance of this Contract and until all of its obligations pursuant to this Contract have been met, the Contractor shall provide and maintain at its own expense insurance coverage satisfying the requirements specified in Sections 11.24 and 11.25 of this Contract. These minimum insurance coverage terms, types and limits (the "Required Insurance") also are in addition to and separate from any other contractual obligation imposed upon the Contractor pursuant to this Contract. The District in no way warrants that the Required Insurance is sufficient to protect the Contractor for liabilities which may arise from or relate to this Contract.

### **11.24.1 Evidence of Coverage and Notice to District**

- Certificate(s) of insurance coverage (Certificate) satisfactory to the District, and a copy of an Additional Insured endorsement confirming the District and its Agents (defined below) has been given Insured status under the Contractor's General Liability policy, shall be delivered to the District at the address shown below and provided prior to commencing services under this Contract.
- Renewal Certificates shall be provided to the District not less than 10 days prior to the Contractor's policy expiration dates. The District reserves the right to obtain complete, certified copies of any required Contractor and/or sub-contractor insurance policies at any time.
- Certificates shall identify all Required Insurance coverage types and limits specified herein, reference this Contract by name or number, and be signed by an authorized representative of the insurer(s). The Insured party named on the Certificate shall match the name of the Contractor identified as the contracting party in this Contract. Certificates shall provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, its financial rating, the amounts of any policy deductibles or self-insured retentions exceeding fifty thousand (\$50,000.00) dollars, and list any District required endorsement forms.
- Neither the District's failure to obtain, nor the District's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by the Contractor, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any of the Required Insurance provisions.

Certificates and copies of any required endorsements shall be sent to:

***Consolidated Fire Protection District of Los Angeles County  
Administrative Services Bureau / Contracts Section  
5801 S. Eastern Avenue, Suite 100  
Commerce, CA 90040-4001***

The Contractor also shall promptly report to the District any injury or property damage accident or incident, including any injury to a Contractor employee occurring on District property, and any loss, disappearance, destruction, misuse, or theft of District property, monies or securities entrusted to the Contractor. The Contractor also shall promptly notify the District of any third party claim or suit filed against Contractor or any of its sub-contractors which arises from or relates to this Contract, and could result in the filing of a claim or lawsuit against the Contractor and/or District.

#### **11.24.2 Additional Insured Status and Scope of Coverage**

The District, the County of Los Angeles, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively the District and its Agents) shall be provided additional insured status under the Contractor's General Liability policy with respect to liability arising out of the Contractor's ongoing and completed operations performed on behalf of the District. The District and its Agents additional insured status shall apply with respect to liability and defense of suits arising out of the Contractor's acts or omissions, whether such liability is attributable to the Contractor or to the District. The full policy limits and scope of protection also shall apply to the District and its Agents as an additional insured, even if they exceed the District's minimum Required Insurance specifications herein. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.

#### **11.24.3 Cancellation of or Changes in Insurance**

The Contractor shall provide the District with, or the Contractor's insurance policies shall contain a provision that the District shall receive, written notice of cancellation or any change in Required Insurance, including insurer, limits of coverage, term of coverage or policy period. The written notice shall be provided to the District at least ten (10) days in advance of cancellation for non-payment of premium and thirty (30) days in advance for any other cancellation or policy change. Failure to provide written notice of cancellation or any change in Required Insurance may constitute a material breach of the Contract, in the sole discretion of the District, upon which the District may suspend or terminate this Contract.

#### **11.24.4 Failure to Maintain Insurance**

The Contractor's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall constitute a material breach of the Contract, upon which the District immediately may withhold payments due to the Contractor, and/or suspend or terminate this Contract. The District, at its sole discretion, may obtain damages from the Contractor resulting from said breach. Alternatively, the District may purchase the Required Insurance, and without further notice to the Contractor, deduct the premium cost from sums due to the Contractor or pursue Contractor reimbursement.

#### **11.24.5 Insurer Financial Ratings**

Coverage shall be placed with insurers acceptable to the District with A.M. Best ratings of not less than A:VII unless otherwise approved by the District.

#### **11.24.6 Contractor's Insurance Shall Be Primary**

The Contractor's insurance policies, with respect to any claims related to this Contract, shall be primary with respect to all other sources of coverage

available to the Contractor. Any District maintained insurance or self-insurance coverage shall be in excess of and not contribute to any Contractor coverage.

#### **11.24.7 Waivers of Subrogation**

Contractor hereby waives its subrogation rights of recovery against the District in all cases unless the District is solely responsible for a loss or in event the District is named as additional insured under the policy.

#### **11.24.8 Sub-Contractor Insurance Coverage Requirements**

The Contractor shall include all sub-contractors as insureds under the Contractor's own policies, or shall provide the District with each sub-contractor's separate evidence of insurance coverage. The Contractor shall be responsible for verifying each sub-contractor complies with the Required Insurance provisions herein, and shall require that each sub-contractor name the District and Contractor as additional insureds on the sub-contractor's General Liability policy. The Contractor shall obtain the District's prior review and approval of any sub-contractor request for modification of the Required Insurance.

#### **11.24.9 Deductibles and Self-Insured Retentions (SIRs)**

The Contractor's policies shall not obligate the District to pay any portion of any Contractor deductible or SIR. The District retains the right to require the Contractor to reduce or eliminate policy deductibles and SIRs as respects the District, or to provide a bond guaranteeing the Contractor's payment of all deductibles and SIRs, including all related claims investigation, administration and defense expenses. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

#### **11.24.10 Claims Made Coverage**

If any part of the Required Insurance is written on a claims made basis, any policy retroactive date shall precede the effective date of this Contract. The Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.

#### **11.24.11 Application of Excess Liability Coverage**

The Contractor may use a combination of primary, and excess insurance policies which provide coverage as broad as the underlying primary policies, to satisfy the Required Insurance provisions.

#### **11.24.12 Separation of Insureds**

All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.

#### **11.24.13 Alternative Risk Financing Programs**

The District reserves the right to review, and then approve, Contractor use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy the Required Insurance provisions. The District and its Agents shall be designated as an Additional Covered Party under any approved program.

#### **11.24.14 District Review and Approval of Insurance Requirements**

The District reserves the right to review and adjust the Required Insurance provisions, conditioned upon the District's determination of changes in risk exposures.

### **11.25 INSURANCE COVERAGE**

**11.25.1 Commercial General Liability** insurance (providing scope of coverage equivalent to ISO policy form CG 00 01), naming the District and its Agents as an additional insured, with limits of not less than:

General Aggregate:	\$2 million
Products/Completed Operations Aggregate:	\$1 million
Personal and Advertising Injury:	\$1 million
Each Occurrence:	\$1 million

**11.25.2 Automobile Liability** insurance (providing scope of coverage equivalent to ISO policy form CA 00 01) with limits of not less than \$1 million for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Insurance shall cover liability arising out of the Contractor's use of autos pursuant to this Contract, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

**11.25.3 Workers Compensation and Employers' Liability** insurance or qualified self-insurance satisfying statutory requirements, which includes Employers' Liability coverage with limits of not less than \$1 million per accident. If the Contractor will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage also shall include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming the District as the Alternate Employer, and the endorsement form shall be modified to provide that the District will receive not less than thirty (30) days advance written notice of cancellation of

this coverage provision. If applicable to the Contractor's operations, coverage also shall be arranged to satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.

**11.25.4 Intentionally Omitted**

**11.25.5 Technology Errors & Omissions insurance**, including coverage for liabilities arising from errors, omissions, or negligent acts in rendering or failing to render computer or information technology services and technology products. Coverage for violation of software copyright should be included. Technology services should at a minimum include (1) systems analysis (2) systems programming (3) data processing (4) systems integration (5) outsourcing including outsourcing development and design (6) systems design, consulting, development and modification (7) training services relating to computer software or hardware (8) management, repair and maintenance of computer products, networks and systems (9) marketing, selling, servicing, distributing, installing and maintaining computer hardware or software (10) data entry, modification, verification, maintenance, storage, retrieval or preparation of data output, and any other services provided by the Contractor with limits not less than \$10 million.

**11.25.6 Privacy/Network Security (Cyber) liability** coverage providing protection against liability for (1) privacy breaches [liability arising from the loss or disclosure of confidential information no matter how it occurs] (2) system breach (3) denial or loss of service (4) introduction, implantation, or spread of malicious software code (5) unauthorized access to or use of computer systems with limits not less than \$10 million. No exclusion/restriction for unencrypted portable devices/media may be on the policy.

**11.25.7 Performance Security Requirements:** Such surety may be provided by one of the following forms and conditioned upon faithful performance and satisfactory completion of services by the Contractor.

- **Performance Bond:** A faithful performance bond in the sum of not less than twelve (12) months of the contract value payable to the District and executed by a corporate surety licensed to transact business in the State of California; or
- **Certificate of Deposit (CD) or Letter of Credit (LOC):** A CD or an irrevocable LOC payable to the District upon demand in an amount not less than three (3) months of the contract value. Such CD or LOC shall comply with the minimum standards established by the District and be maintained throughout the term of the Contract.

**11.26 INTENTIONALLY OMITTED**

**11.27 MOST FAVORED PUBLIC ENTITY**

If the Contractor's prices decline, or should the Contractor at any time during the term of this Contract provide the same goods or services under similar quantity and delivery conditions to the State of California or any county, municipality, or district of the State at prices below those set forth in this Contract, then such lower prices shall be immediately extended to the District on a going forward basis, provided the District has been advised of the price reduction provided to the third party within 90 days of the occurrence.

## **11.28 NO THIRD PARTY BENEFICIARIES**

Notwithstanding any other provision of this Contract, the Contractor and District do not in any way intend that any person or entity shall acquire any rights as a third party beneficiary of this Contract, except that this provision shall not be construed to diminish the Contractor's indemnification obligations hereunder.

## **11.29 NONDISCRIMINATION AND AFFIRMATIVE ACTION**

- 11.29.1 The Contractor certifies and agrees that all persons employed by it, its affiliates, subsidiaries, or holding companies are and shall be treated equally without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations.
- 11.29.2 The Contractor shall certify to, and comply with, the provisions of Exhibit G - Contractor's EEO Certification.
- 11.29.3 The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action shall include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 11.29.4 The Contractor certifies and agrees that it will deal with its subcontractors, bidders, or vendors without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation.
- 11.29.5 The Contractor certifies and agrees that it, its affiliates, subsidiaries, or holding companies shall comply with all applicable Federal and State laws and regulations to the end that no person shall, on the grounds of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract.

- 11.29.6 The Contractor shall allow District representatives access to the Contractor's employment records during regular business hours to verify compliance with the provisions of this sub-paragraph 11.29 when so requested by the District.
- 11.29.7 If the District finds that any provisions of this sub-paragraph 11.29 have been violated, such violation shall constitute a material breach of this Contract upon which the District may terminate or suspend this Contract. While the District reserves the right to determine independently that the anti-discrimination provisions of this Contract have been violated, in addition, a determination by the California Fair Employment and Housing Commission or the Federal Equal Employment Opportunity Commission that the Contractor has violated Federal or State anti-discrimination laws or regulations shall constitute a finding by the District that the Contractor has violated the anti-discrimination provisions of this Contract.
- 11.29.8 The parties agree that in the event the Contractor violates any of the anti-discrimination provisions of this Contract, the District shall, at its sole option, be entitled to the sum of Five Hundred Dollars (\$500) for each such violation pursuant to California Civil Code Section 1671 as liquidated damages in lieu of terminating or suspending this Contract.

### **11.30 NON EXCLUSIVITY**

Nothing herein is intended nor shall be construed as creating any exclusive arrangement with the Contractor. This Contract shall not restrict the District from acquiring similar, equal or like goods and/or services from other entities or sources.

### **11.31 NOTICE OF DELAYS**

Except as otherwise provided under this Contract, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Contract, that party shall, within one (1) business day, give notice thereof, including all relevant information with respect thereto, to the other party.

### **11.32 NOTICE OF DISPUTES**

The Contractor shall bring to the attention of the District's Project Manager and/or District's Project Director any dispute between the District and the Contractor regarding the performance of services as stated in this Contract. If the District's Project Manager or District's Project Director is not able to resolve the dispute, the Fire Chief, or designee shall resolve it in accordance with Section 11.54 (Dispute Resolution Procedure).

### **11.33 NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT**

The Contractor shall notify its employees, and shall require each Subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the federal income tax laws. Such notice shall be provided in accordance with the requirements set forth in Internal Revenue Service Notice No. 1015.



#### **11.34 NOTICE TO EMPLOYEES REGARDING THE SAFELY SURRENDERED BABY LAW**

The Contractor shall notify and provide to its employees, and shall require each Subcontractor to notify and provide to its employees, a fact sheet regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The fact sheet is set forth in Exhibit of this Contract and is also available on the Internet at [www.babysafela.org](http://www.babysafela.org) for printing purposes.

#### **11.35 NOTICES**

All notices or demands required or permitted to be given or made under this Contract, unless otherwise specified, shall be in writing and shall be hand delivered with signed receipt or mailed by first-class registered or certified mail, postage prepaid, addressed to the parties as identified in Exhibits D - District's Administration and E - Contractor's Administration. Addresses may be changed by either party giving ten (10) days' prior written notice thereof to the other party. The Fire Chief or his designee shall have the authority to issue all notices or demands required or permitted by the District under this Contract.

#### **11.36 PROHIBITION AGAINST INDUCEMENT OR PERSUASION**

Notwithstanding the above, the Contractor and the District agree that, during the term of this Contract and for a period of one year thereafter, neither party shall in any way intentionally induce or persuade any employee of one party to become an employee or agent of the other party. No bar exists against any hiring action initiated through a public announcement.

#### **11.37 PUBLIC RECORDS ACT**

11.37.1 Any documents submitted by the Contractor; all information obtained in connection with the District's right to audit and inspect the Contractor's documents, books, and accounting records pursuant to sub-paragraph 11.39 - Record Retention and Inspection/Audit Settlement of this Contract; as well as those documents which were required to be submitted in response to the Request for Proposals (RFP) used in the solicitation process for this Contract, become the exclusive property of the District. All such documents become a matter of public record and shall be regarded as public records. Exceptions will be those elements in the California Government Code Section 6250 et seq. (Public Records Act) and which are marked "trade secret", "confidential", or "proprietary". The District shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction.

11.37.2 In the event the District is required to defend an action on a Public Records Act request for any of the aforementioned documents, information, books, records, and/or contents of a proposal marked "trade secret", "confidential", or "proprietary", the Contractor agrees to defend and indemnify the District from all

costs and expenses, including reasonable attorney's fees, in action or liability arising under the Public Records Act.

### **11.38 PUBLICITY**

11.38.1 The Contractor shall not disclose any details in connection with this Contract to any person or entity except as may be otherwise provided hereunder or required by law. However, in recognizing the Contractor's need to identify its services and related clients to sustain itself, the District shall not inhibit the Contractor from publishing its role under this Contract within the following conditions:

- The Contractor shall develop all publicity material in a professional manner; and
- During the term of this Contract, the Contractor shall not, and shall not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of the District without the prior written consent of the District's Project Director. The District shall not unreasonably withhold written consent.

11.38.2 The Contractor may, without the prior written consent of the District, indicate in its proposals and sales materials that it has been awarded this Contract with the County of Los Angeles, provided that the requirements of this sub-paragraph 11.37 shall apply.

### **11.39 RECORD RETENTION AND INSPECTION/AUDIT SETTLEMENT**

The Contractor shall maintain accurate and complete financial records of its activities and operations relating to this Contract in accordance with generally accepted accounting principles. The Contractor shall also maintain accurate and complete employment and other records relating to its performance of this Contract. The Contractor agrees that the District, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Contract. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, shall be kept and maintained by the Contractor and shall be made available to the District during the term of this Contract and for a period of five (5) years thereafter unless the District's written permission is given to dispose of any such material prior to such time. All such material shall be maintained by the Contractor at a location in Los Angeles County, provided that if any such material is located outside Los Angeles County, then, at the District's option, the Contractor shall pay the District for travel, per diem, and other costs incurred by the District to examine, audit, excerpt, copy, or transcribe such material at such other location.

11.39.1 In the event that an audit of the Contractor is conducted specifically regarding this Contract by any Federal or State auditor, or by any auditor or accountant employed by the Contractor or otherwise, then the Contractor shall file a copy of

such audit report with the District's Auditor-Controller within thirty (30) days of the Contractor's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Contract. Subject to applicable law, the District shall make a reasonable effort to maintain the confidentiality of such audit report(s).

11.39.2 Failure on the part of the Contractor to comply with any of the provisions of this sub-paragraph 10.38 shall constitute a material breach of this Contract upon which the District may terminate or suspend this Contract.

11.39.3 If, at any time during the term of this Contract or within five (5) years after the expiration or termination of this Contract, representatives of the District conduct an audit of the Contractor regarding the work performed under this Contract, and if such audit finds that the District's dollar liability for any such work is less than payments made by the District to the Contractor, then the difference shall be either: a) repaid by the Contractor to the District by cash payment upon demand or b) at the sole option of the District's Auditor-Controller, deducted from any amounts due to the Contractor from the District, whether under this Contract or otherwise. If such audit finds that the District's dollar liability for such work is more than the payments made by the District to the Contractor, then the difference shall be paid to the Contractor by the District by cash payment, provided that in no event shall the District's maximum obligation for this Contract exceed the funds appropriated by the District for the purpose of this Contract.

#### **11.40 RECYCLED BOND PAPER**

Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at the County landfills, the Contractor agrees to use recycled-content paper to the maximum extent possible on this Contract.

#### **11.41 SUBCONTRACTING**

11.41.1 The requirements of this Contract may not be subcontracted by the Contractor **without the advance approval of the District**. Any attempt by the Contractor to subcontract without the prior consent of the District may be deemed a material breach of this Contract.

11.41.2 If the Contractor desires to subcontract, the Contractor shall provide the following information promptly at the District's request:

- A description of the work to be performed by the subcontractor;
- A draft copy of the proposed subcontract; and
- Other pertinent information and/or certifications requested by the District.

11.41.3 The Contractor shall indemnify and hold the District harmless with respect to the activities of each and every subcontractor in the same manner and to the same degree as if such subcontractor(s) were the Contractor employees.

- 11.41.4 The Contractor shall remain fully responsible for all performances required of it under this Contract, including those that the Contractor has determined to subcontract, notwithstanding the District's approval of the Contractor's proposed subcontract.
- 11.41.5 The District's consent to subcontract shall not waive the District's right to prior and continuing approval of any and all personnel, including subcontractor employees, providing services under this Contract. The Contractor is responsible to notify its subcontractors of this District right.
- 11.41.6 The District's Project Director is authorized to act for and on behalf of the District with respect to approval of any subcontract and subcontractor employees. After approval of the subcontract by the District, the Contractor shall forward a fully executed subcontract to the District for their files.
- 11.41.7 The Contractor shall be solely liable and responsible for all payments or other compensation to all subcontractors and their officers, employees, agents, and successors in interest arising through services performed hereunder, notwithstanding the District's consent to subcontract.
- 11.41.8 The Contractor shall obtain certificates of insurance, which establish that the subcontractor maintains all the programs of insurance required by the District from each approved Subcontractor. The Contractor shall ensure delivery of all such documents to:

Lucy Guadiana, Contract Administrator  
Consolidated Fire Protection District of Los Angeles County  
Administrative Services Bureau / Contracts Section  
5801 S. Eastern Ave. Suite 100  
Commerce, CA 90040-4001

before any subcontractor employee may perform any work hereunder.

#### **11.42 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM**

Failure of the Contractor to maintain compliance with the requirements set forth in Paragraph 11.14 - Contractor's Warranty of Adherence to County's Child Support Compliance Program, shall constitute default under this Contract. Without limiting the rights and remedies available to the District under any other provision of this Contract, failure of the Contractor to cure such default within ninety (90) calendar days of written notice shall be grounds upon which the District may terminate this Contract pursuant to Paragraph 11.44 - Termination for Default and pursue debarment of the Contractor, pursuant to County Code Chapter 2.202.

#### **11.43 TERMINATION FOR CONVENIENCE**

- 11.43.1 This Contract may be terminated, in whole or in part, from time to time, when such action is deemed by the District, in its sole discretion, to be in its best

interest. Termination of work hereunder shall be effected by notice of termination to the Contractor specifying the extent to which performance of work is terminated and the date upon which such termination becomes effective. The date upon which such termination becomes effective shall be no less than ten (10) days after the notice is sent.

11.43.2 After receipt of a notice of termination and except as otherwise directed by the District, the Contractor shall:

- Stop work under this Contract on the date and to the extent specified in such notice, and
- Complete performance of such part of the work as shall not have been terminated by such notice.

11.43.3 All material including books, records, documents, or other evidence bearing on the costs and expenses of the Contractor under this Contract shall be maintained by the Contractor in accordance with Paragraph 11.39, Record Retention and Inspection/Audit Settlement.

#### **11.44 TERMINATION FOR DEFAULT**

11.44.1 The District may, by written notice to the Contractor, terminate the whole or any part of this Contract, if, in the judgment of District's Project Director:

- the Contractor has materially breached this Contract and fails to cure such alleged breach within thirty (30) days' written notice from the District; or
- the Contractor fails to timely provide and/or satisfactorily perform any task, deliverable, service, or other work required either under this Contract and fails to cure such alleged breach within thirty (30) days' written notice from the District; or
- the Contractor fails to demonstrate a high probability of timely fulfillment of performance requirements under this Contract, or of any obligations of this Contract and in either case, fails to demonstrate convincing progress toward a cure within thirty (30) working days (or such longer period as the District may authorize in writing) after receipt of written notice from the District specifying such failure.

Notwithstanding the foregoing, the District may, by written notice to the Contractor, terminate the whole or any part of this Contract, if Contractor defaults on three (3) or more occasions during the Term, regardless of whether Contractor corrected such breaches within the applicable thirty (30)-day cure period set forth above.

11.44.2 In the event that the District terminates this Contract in whole or in part as provided in sub-paragraph 11.44.1, the District may procure, upon such terms

and in such manner as the District may deem appropriate, goods and services similar to those so terminated. The Contractor shall be liable to the District for any and all excess costs incurred by the District, as determined by the District, for such similar goods and services. The Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this sub-paragraph.

- 11.44.3 Except with respect to defaults of any subcontractor, the Contractor shall not be liable for any such excess costs of the type identified in sub-paragraph 11.44.2 if its failure to perform this Contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not limited to: acts of God or of the public enemy, acts of the District in either its sovereign or contractual capacity, acts of Federal or State governments in their sovereign capacities, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any such excess costs for failure to perform, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule. As used in this sub-paragraph, the term "subcontractor(s)" means subcontractor(s) at any tier.
- 11.44.4 If, after the District has given notice of termination under the provisions of this sub-paragraph 11.44.4, it is determined by the District that the Contractor was not in default under the provisions of this sub-paragraph 11.44.4, or that the default was excusable under the provisions of sub-paragraph 11.44.3, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to sub-paragraph 11.43.1 - Termination for Convenience.
- 11.44.5 The rights and remedies of the District provided in this sub-paragraph 11.44 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

#### **11.45 TERMINATION FOR IMPROPER CONSIDERATION**

- 11.45.1 The District may, by written notice to the Contractor, immediately terminate the right of the Contractor to proceed under this Contract if it is found that consideration, in any form, was offered or given by the Contractor, either directly or through an intermediary, to any District officer, employee, or agent with the intent of securing this Contract or securing favorable treatment with respect to the award, amendment, or extension of this Contract or the making of any determinations with respect to the Contractor's performance pursuant to this Contract. In the event of such termination, the District shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of default by the Contractor.

11.45.2 The Contractor shall immediately report any attempt by a District officer or employee to solicit such improper consideration. The report shall be made either to the District manager charged with the supervision of the employee or to the District Auditor-Controller's Employee Fraud Hotline at (800) 544-6861.

11.45.3 Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

#### **11.46 TERMINATION FOR INSOLVENCY**

11.46.1 The District may terminate this Contract forthwith in the event of the occurrence of any of the following:

- Insolvency of the Contractor. The Contractor shall be deemed to be insolvent if it has ceased to pay its debts for at least sixty (60) days in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not the Contractor is insolvent within the meaning of the Federal Bankruptcy Code;
- The filing of a voluntary or involuntary petition regarding the Contractor under the Federal Bankruptcy Code;
- The appointment of a Receiver or Trustee for the Contractor; or
- The execution by the Contractor of a general assignment for the benefit of creditors.

11.46.2 The rights and remedies of the District provided in this sub-paragraph 11.46 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

#### **11.47 TERMINATION FOR NON-ADHERENCE OF COUNTY LOBBYIST ORDINANCE**

The Contractor, and each County Lobbyist or County Lobbying firm as defined in County Code Section 2.160.010 retained by the Contractor, shall fully comply with the County's Lobbyist Ordinance, County Code Chapter 2.160. Failure on the part of the Contractor or any County Lobbyist or County Lobbying firm retained by the Contractor to fully comply with the County's Lobbyist Ordinance shall constitute a material breach of this Contract, upon which the District may in its sole discretion, immediately terminate or suspend this Contract.

#### **11.48 TERMINATION FOR NON-APPROPRIATION OF FUNDS**

Notwithstanding any other provision of this Contract, the District shall not be obligated for the Contractor's performance hereunder or by any provision of this Contract during any of the District's future fiscal years unless and until the District's Board of Supervisors appropriates funds for this Contract in the District's Budget for each such future fiscal

year. In the event that funds are not appropriated for this Contract, then this Contract shall terminate as of June 30 of the last fiscal year for which funds were appropriated. The District shall notify the Contractor in writing of any such non-allocation of funds at the earliest possible date.

#### **11.49 VALIDITY**

If any provision of this Contract or the application thereof to any person or circumstance is held invalid, the remainder of this Contract and the application of such provision to other persons or circumstances shall not be affected thereby.

#### **11.50 WAIVER**

No waiver by the District of any breach of any provision of this Contract shall constitute a waiver of any other breach or of such provision. Failure of the District to enforce at any time, or from time to time, any provision of this Contract shall not be construed as a waiver thereof. The rights and remedies set forth in this sub-paragraph 11.50 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

#### **11.51 WARRANTY AGAINST CONTINGENT FEES**

11.51.1 The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any Contract or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

11.51.2 For breach of this warranty, the District shall have the right to terminate this Contract and, at its sole discretion, deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

#### **11.52 WARRANTY OF COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM**

The Contractor acknowledges that the District has established a goal of ensuring that all individuals and businesses that benefit financially from the District through contract are current in paying their property tax obligations (secured and unsecured roll) in order to mitigate the economic burden otherwise imposed upon the County and its taxpayers.

Unless the Contractor qualifies for an exemption or exclusion, the Contractor warrants and certifies that to the best of its knowledge it is now in compliance, and during the term of this Contract will maintain compliance, with Los Angeles County Code Chapter 2.206.

#### **11.53 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM**



Failure of the Contractor to maintain compliance with the requirements set forth in Paragraph 11.52 "Warranty of Compliance with County's Defaulted Property Tax Reduction Program" shall constitute default under this Contract. Without limiting the rights and remedies available to the District under any other provision of this Contract, failure of the Contractor to cure such default within 10 days of notice shall be grounds upon which the District may terminate this contract and/or pursue debarment of the Contractor, pursuant to County Code Chapter 2.206.

#### **11.54 DISPUTE RESOLUTION PROCEDURE**

It is the intent of the parties that all disputes arising under this Contract be resolved expeditiously, amicably, and at the level within each party's organization that is most knowledgeable about the disputed issue. The parties understand and agree that the procedures outlined in this Section 11.54 (Dispute Resolution Procedure) are not intended to supplant the routine handling of inquiries and complaints through informal contact with their respective managers. Accordingly, for purposes of the procedures set forth in this Section 11.54 (Dispute Resolution Procedure), a "Dispute" shall mean any action, dispute, claim, or controversy of any kind, whether in contract or tort, statutory or common law, legal or equitable, now existing or hereafter arising under or in connection with, or in any way pertaining to this Contract.

11.54.1 The Contractor and the District agree to act with urgency to mutually resolve any Disputes which may arise with respect to this Contract. All such Disputes shall be subject to the provisions of this Section 11.54 (Dispute Resolution Procedure) (such provisions shall be collectively referred to as the "Dispute Resolution Procedure"). Time is of the essence in the resolution of Disputes.

11.54.2 The Contractor and the District agree that, the existence and details of a Dispute notwithstanding, both parties shall continue without delay their performance hereunder, except for any performance which the District reasonably determines should be delayed as a result of such Dispute.

11.54.3 Subject to the provisions of Section 6 (Invoices and Payments), if the Contractor fails to continue without delay its performance hereunder which the District, in its sole discretion, determines should not be delayed as a result of such Dispute, then any additional costs which may be incurred by the Contractor or the District as a result of the Contractor's failure to continue to so perform shall be borne by the Contractor, and the Contractor shall make no claim whatsoever against the District for such costs. The Contractor shall promptly reimburse the District for such District costs, as determined by the District, or the District may deduct all such additional costs from any amounts due to the Contractor from the District.

If the District fails to continue without delay to perform its responsibilities under this Contract which the District determines should not be delayed as a result of such Dispute, then any additional costs incurred by the Contractor or the District as a result of the District's failure to continue to so perform shall be borne by the District, and the District shall make no claim whatsoever against

the Contractor for such costs. The District shall promptly reimburse the Contractor for all such additional Contractor costs subject to the Approval of such costs by the District.

11.54.4 In the event of any Dispute between the parties with respect to this Contract, the Contractor and the District shall submit the matter to their respective Project Managers for the purpose of endeavoring to resolve such Dispute.

11.54.5 In the event that the Project Managers are unable to resolve the Dispute within a reasonable time not to exceed ten (10) days from the date of submission of the Dispute to them, then the matter shall be immediately submitted to the parties' respective Project Directors for further consideration and discussion to attempt to resolve the Dispute.

11.54.6 In the event that the Project Directors are unable to resolve the Dispute within a reasonable time not to exceed ten (10) days from the date of submission of the Dispute to them, then the matter shall be immediately submitted to the Contractor's Executive Vice President and the Fire Chief. These persons shall have ten (10) days to attempt to resolve the Dispute.

11.54.7 In the event that at these levels, there is not a resolution of the Dispute acceptable to both parties, then each party may assert its other rights and remedies provided under this Contract and/or its rights and remedies as provided by law.

11.54.8 All disputes utilizing this Dispute Resolution Procedure shall be documented in writing by each party and shall state the specifics of each alleged dispute and all actions taken. The parties shall act in good faith to resolve all disputes. At all three (3) levels described in this Section 11.54 (Dispute Resolution Procedure), the efforts to resolve a Dispute shall be undertaken by conference between the parties' respective representatives, either orally, by face to face meeting or by telephone, or in writing by exchange of correspondence.

11.54.9 Notwithstanding any other provision of this Contract, the District's right to terminate this Contract or either party's right to seek injunctive relief to enforce the provisions of Section 8 (Confidentiality and Security) shall not be subject to this Dispute Resolution Procedure. The preceding sentence is intended only as a clarification of the parties' rights and shall not be deemed to impair any claims that either party may have or a party's rights to assert such claims after any such termination or such injunctive relief has been obtained.

## **11.55 DISPUTE RESOLUTION WITH CONTRACTOR AND OTHER VENDORS**

The Contractor shall, on the District's request, participate in dispute resolution in accordance with this Contract with the District and the Contractor and the District's third-party vendors, including Hardware vendors, to resolve any disputes between and/or

among such vendors, including the District and the Contractor, as to responsibility by any particular vendor for issues arising from performance, warranties, and other issues relating to the System.

#### **11.56 BANKRUPTCY AND LIQUIDATION**

In the event that the Contractor shall: (a) make an assignment for the benefit of creditors or petition or apply to any tribunal for the appointment of a custodian, receiver, or trustee for all or a substantial part of its assets; (b) commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction whether now or hereafter in effect; (c) have had any such petition or application filed or any such proceeding commenced against it in which an order for relief is entered or an adjudication or appointment is made, and which remains undismissed for a period of one-hundred and twenty (120) days or more; (d) take any corporate action indicating its consent to, approval of, or acquiescence in any such petition, application, proceeding, or order for relief or the appointment of a custodian, receiver, or trustee for all or substantial part of its assets; or (e) permit any such custodianship, receivership, or trusteeship to continue undischarged for a period of one-hundred and twenty (120) days or more, causing the Contractor or any third-party, including, without limitation, a trustee in bankruptcy, to be empowered under state or federal law to reject this Agreement or any agreement supplementary hereto, the District shall have the following rights:

- 11.56.1 In the event of a rejection of this Contract or any agreement supplementary hereto, the District shall be permitted to retain and use any back-up or archival copies of the System Software under this Contract, as provided under Section 365(n) of the United States Bankruptcy Code (11 U.S.C. Section 365(n)) for the purpose of enabling it to mitigate damages caused to the District because of the rejection of this Contract;
- 11.56.2 In the event of a rejection of this Contract or any agreement supplementary hereto, the District may elect to retain its rights under this Contract or any agreement supplementary hereto as provided in Section 365(n) of the Bankruptcy Code. Upon written request of the District to, as applicable, the Contractor or the bankruptcy trustee or receiver, the Contractor or such bankruptcy trustee or receiver shall not interfere with the rights of the District as provided in this Contract or in any agreement supplementary hereto to obtain the Deposited Source Code from the bankruptcy trustee or from a third-party escrow agent and shall, if requested, cause a copy of such Deposited Source Code to be available to the District; and
- 11.56.3 In the event of a rejection of this Contract or any agreement supplementary hereto, the District may retain its rights under this Contract or any agreement supplementary hereto as provided in Section 365(n) of the Bankruptcy Code without prejudice to any of its rights under Section 503(b) of the Bankruptcy Code.

## **12.0 UNIQUE TERMS AND CONDITIONS**

### **12.1 CONTRACTOR'S OBLIGATIONS AS A "BUSINESS ASSOCIATE" UNDER HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA) AND THE HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT (HITECH)**

As of the Effective Date, the District is not subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). In the event that the District becomes subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Contractor receives, has access to, and/or creates Protected Health Information as defined in 45 C.F.R Section 160.103 in order to provide the services under this Contract, The District and the Contractor shall enter into a Business Associate Agreement in the form of Exhibit J. The District may amend Exhibit J as is necessary to comply with the requirements of the Privacy and Security Laws and in such event the District will execute a Change Notice in accordance with Section 11.1.1, which shall replace Exhibit J with the updated Business Associate Agreement.

### **12.2 WARRANTIES**

#### **12.2.1 Conformance to Specifications**

All System Software, Hardware, Services, including Implementation Services, Hosting Services, Maintenance and Support Services, and Deliverables shall conform to the Specifications and requirements set forth in this Contract without material deviations for the period commencing upon the Effective Date and continuing through the expiration or termination of Support Services ("Warranty Period"). The Contractor shall institute quality controls, including suitable testing procedures if any, to ensure that the System Software, Hardware, Services, including Implementation Services, Hosting Services, Maintenance and Support Services, and Deliverables comply with the Specifications and Exhibit C (Service Level and Support Requirements) in a manner consistent with the highest applicable industry standards. Upon the District's reasonable request, the District shall have the right to review Contractor's quality controls in order to verify and/or improve the quality of the System Software, Services and Deliverables.

#### **12.2.2 Continuous Support**

If the Contractor assigns this Contract, is acquired, or is otherwise controlled by another individual or entity (collectively referred to as a "Successor Event"), such individual or entity shall provide Maintenance and Support Services in accordance with this Contract for at least five (5) years following the Successor Event, unless otherwise agreed to in writing by the District. After such five (5) years or, if subsequent to the Successor Event, the System is not supported to at least the same level that Contractor supported the System prior to the Successor Event, because, for example, Contractor's assignee chooses to

support other products with similar functions or does not otherwise properly staff the support for the System, the District, at its sole option, may elect to transfer the license of the System, without cost or penalty, to another similar product ("Replacement Product") within Contractor's assignee's or successor's product offering. For purposes of this Section 12.2.2 (Continuous Support), the term "controlled" shall mean the legal right to elect a majority of the directors of a corporation or similar officers of any other entity or to determine an entity's general management policies through contract or otherwise. The assignee or successor, by taking benefit (including acceptance of any payment under this Contract) ratifies this Contract. All terms and conditions of this Contract shall continue in full force and effect for the Replacement Product. In addition, the following terms and conditions shall apply if the District elects to transfer this license to a Replacement Product:

- (a) Any prepaid maintenance and support shall transfer in full force and effect for the balance of the Replacement Product's maintenance and support term (or equivalent service) at no additional cost. If the prepaid moneys are greater than the Replacement Product's maintenance and support fee for the same term, the credit balance will be applied to future maintenance and support fees or returned to the District, at its option;
- (b) Any and all software offered separately and needed to fulfill the original System's level of functionality shall be supplied by the Contractor's assignee or successor without additional cost or penalty and shall not affect the calculation of any maintenance and support fees;
- (c) Any services required for implementation of the Replacement Product shall be provided by the Contractor's assignee or successor without additional cost or penalty;
- (d) The Contractor shall provide to the District reasonable training for purposes of learning the Replacement Product at no cost to the District;
- (e) All license terms and conditions shall remain as granted herein with no additional fees imposed on the District; and
- (f) The definition of System shall then mean and include the Replacement Product.

### **12.2.3 HIPAA Transaction and Code Set Standards Warranty**

The Contractor represents and warrants that the System currently complies with HIPAA. Maintaining compliance with HIPAA is deemed a Legal Requirement of this Contract. Further, the Contractor represents and warrants that, as of the Effective Date:

- (a) The System complies with (i) Version 5010 of the Accredited Standards Committee (ASC) X12 standards for HIPAA transactions, (ii) Version D.0

of the National Council for Prescription Drug Program (NCPDP) standards for pharmacy and supplier transactions, and (iii) Version 3.0 of the NCPDP standard for Medicaid pharmacy subrogation. In addition, the System complies with (1) Version 4010/4010A1 of the ASC X12 standards for HIPAA transactions, and (2) Version 5.1 of the NCPDP standards for pharmacy and supplier transactions to enable the District to use the System to conduct electronic transactions with third party systems that are not yet compliant with the latest versions of the standards; and

- (b) The System complies with the ICD-10 (International Classification of Diseases, 10th Revision) code set standard for coding diagnoses and procedures. In addition, the System complies with the ICD-9 (International Classification of Diseases, 9th revision, Clinical) code set standard to enable the District to use the System to conduct electronic transactions (using the appropriate coding for diagnoses and procedures) with third party systems that are not yet compliant with the latest versions of the standards.

#### **12.2.4 Legal Compliance**

The System, System Software, Services, and Deliverables currently comply with the Privacy and Security Laws and all existing federal, state, and local laws; (collectively referred to as “Legal Requirements”). Further, the Contractor represents and warrants that it shall provide the District with the functionality necessary for the District to comply with all new, amended, or otherwise modified Legal Requirements, applicable to the System, System Software, Services, and Deliverables at no additional charge to the District. Furthermore, the Contractor represents and warrants that it shall comply with all applicable laws, regulations, and rules that may be in effect during the term of this Contract as they concern the subject matter of this Contract. In the event the System, System Software, Services, and/or Deliverables fails to perform as warranted under this Section, the Contractor shall, upon notice initiate commercially reasonable efforts to correct errors, provide functionality, or bring the System, System Software, Services, and/or Deliverables into compliance with the warranty as set forth in this Contract at no additional charge to the District.

#### **12.2.5 Known Performance Issues**

There is no existing pattern or repetition of customer complaints regarding the System, System Software, Deliverables, or Services, including functionality or performance issues, and that the Contractor's engineers have not currently identified any repeating adverse impact on the System, System Software, Deliverables, or Services, including functionality or performance, for which the root cause is believed to be a flaw or defect in the System, System Software, Deliverables or Services. The foregoing warranty shall not extend to any specifications provided by the District.

#### **12.2.6 Non-Infringement**

To the best of the Contractor's knowledge as of the Effective Date, the System, System Software, Services and the Deliverables shall not contain defamatory or indecent matter, and the District's permitted use of the System, System Software, Hardware, Services, including Implementation Services, Hosting Services, Maintenance and Support Services, and Deliverables will not infringe the intellectual property rights of any third party.

#### **12.2.7 Destructive/Disabling Mechanisms**

The System, System Software, Hardware, Services, including Implementation Services, Hosting Services, Maintenance and Support Services, and/or Deliverables does not contain, and the Contractor shall not insert into the System, System Software, Hardware or any Deliverables or Services, including Implementation Services, Hosting Services, and Maintenance and Support Services, any Destructive Mechanisms. The Contractor shall not invoke such mechanisms at any time, including upon expiration or termination of this Contract for any reason. Except if and to the extent expressly necessary for performance of Maintenance and Support Services or any other servicing or support expressly authorized in writing by the District, in no event shall the Contractor, Contractor Personnel or anyone acting on its behalf, disable or interfere, in whole or in part, with the District's use of the System, or any software, hardware, systems or data owned, utilized, or held by the District without the written permission of a corporate officer of the District, whether or not the disablement is in connection with any dispute between the Parties or otherwise. The Contractor understands and acknowledges that a breach of this Section 12.2.7 (Destructive/Disabling Mechanism) could cause substantial harm to the District and to numerous third parties having business relationships with the District. No limitation of liability, whether contractual or statutory, will apply to a breach of this Section 12.2.7 (Destructive/Disabling Mechanism).

#### **12.2.8 System Configuration Warranty**

The Contractor has had the opportunity to assess the District Environment and the District's existing information systems, including, but not limited to, its computer platform(s), operating system(s), applications, interface engine, network infrastructure, connectivity, and workstation configurations relating to installation, implementation, and use of the System (hereinafter collectively referred to as the "Existing System"). The Contractor has also had the opportunity to inquire of the District's staff regarding the operation of the Existing System and its components and has had the opportunity to review relevant documentation regarding the Existing System. The Contractor represents and warrants that the Existing System, together with the System, System Software, the Production Environment and any Hardware purchased hereunder, together with the Contractor's Recommended Configuration, is sufficient in size, capacity, and processing capability to operate the System for the use of the District during the term of the Contract. If equipment,

applications, Interfaces, network infrastructure, connectivity or operating systems, in addition to those in the Existing System or Recommended Configuration as of the Effective Date, are required as a result of a Revision or otherwise to support or operate the System as required by this Contract, the Contractor shall pay all costs associated with the acquisition and installation of such equipment, applications, Interfaces, network infrastructure, connectivity or operating systems. In no event shall any modification to the Recommended Configuration take place without the Contractor providing at least ninety (90) calendar days written notice to the District of the specific modifications together with a work plan.

#### **12.2.9 Integration Warranty**

The System components are capable of interconnecting and/or Interfacing with each other, the third-party software and hardware identified in the Statement of Work, and District Systems, either through integration or, as applicable, industry standard Interface protocols, and when taken together, the System components, third-party software and hardware identified in the Statement of Work, and District Systems will be capable of delivering the functionality needed by the District to meet its information systems requirements as set forth in this Contract and the Specifications. As to District Systems (which utilize then-current industry standard interface protocols) acquired after the Effective Date, the System and System Software shall be capable of Interfacing with such District Systems using then-current industry standard Interface protocols. The System and System Software must be Interoperable at the time it is provided to the District and at all times thereafter during the term of this Contract.

#### **12.2.10 Performance of Services**

The Services will be performed and the Deliverables developed in a professional, competent, and timely manner by appropriately qualified Contractor personnel in accordance with this Contract and consistent with the Contractor's applicable best practices.

#### **12.2.11 Disclaimer of Other Warranties**

The warranties set forth in this Contract are in lieu of, and the Contractor hereby disclaims, all other warranties, express or implied, regarding the products and services provided hereunder, including the implied warranties of merchantability and fitness for a particular purpose.

#### **12.2.12 Warranty Pass-Through**

The Contractor shall assign to the District to the fullest extent permitted by law or by this Contract, and shall otherwise ensure that the benefits of any applicable warranty or indemnity offered by any manufacturer of any Ssyetm module and/or component or any other product or service provided hereunder shall fully extend to and be enjoyed by the District.



### **12.2.13 No Pending or Threatened Litigation**

There is no pending or threatened litigation that would have a material adverse impact on its performance under the Contract. In addition, the Contractor also represents and warrants that based on pending actions, claims, disputes, or other information the Contractor's Executive Cabinet as listed in the Contractor's Annual Report or Chief Legal Officer has no knowledge of a failure of the System, Hosting Services, or Third-Party Software to perform in accordance with the Specifications that would impact patient care, System performance, create a financial hardship for customers, or affect confidentiality, and of which the Contractor has not previously notified the District.

### **12.2.14 No Offshore Work**

All Hosting Services shall be performed and rendered within the United States. The Contractor warrants that it will not transmit or make available any of the District's Confidential Information, the District's intellectual property or any District Data to any entity or individual outside the United States without prior written District Approval of such transmittal to an entity or person outside of the United States.

## **12.3 INTELLECTUAL PROPERTY INDEMNIFICATION**

12.3.1 The Contractor shall indemnify, defend and hold harmless the County, its Special Districts including the District, elected and appointed officers, employees, agents and volunteers ("District Indemnitees") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action, or proceeding, commenced or threatened) to which any of the Indemnitees may be subject, whether or not the Contractor is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of the Contractor pertaining to Intellectual Property.

12.3.2 Should any intellectual Property licensed by the Contractor to the District under this Contract become the subject of an Intellectual Property infringement claim, the Contractor will exercise its authority reasonably and in good faith to preserve The District's right to use the licensed Intellectual Property in accordance with this Contract at no expense to The District. The District shall have the right to monitor and appear through its own counsel (at the Contractor's expense) in any such claim or action. In the defense or settlement of the claim, and at no cost to the District, the Contractor may obtain the right for The District to continue using the licensed Intellectual Property; or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or

modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, The District shall be entitled to a refund of all monies paid under this Contract, without restriction or limitation of any other rights and remedies available at law or in equity.

## **12.4 PATENT, COPYRIGHT AND TRADE SECRET INDEMNIFICATION**

12.4.1 The Contractor shall indemnify, hold harmless and defend the County, its Special Districts, including the District, elected and appointed officers, employees, agents and volunteers ("District Indemnitees") from and against any and all liability, damages, costs, and expenses, including, but not limited to, defense costs and attorneys' fees, for or by reason of any actual or alleged infringement of any third party's patent or copyright, or any actual or alleged unauthorized trade secret disclosure, arising from or related to the operation and utilization of the System and/or the Contractor's Services under this Contract. The District shall inform the Contractor as soon as practicable of any claim or action alleging such infringement or unauthorized disclosure, and shall support the Contractor's defense and settlement thereof.

12.4.2 In the event the System, System Software, Services or any part thereof, becomes the subject of any complaint, claim, or proceeding alleging infringement or unauthorized disclosure, such that the District's continued use of such item is formally restrained, enjoined, or subjected to a risk of damages, the Contractor, at its sole expense, and providing that the District's continued use of the System is not materially impeded, shall either:

- Procure for the District all rights to continued use of the questioned System, System Software, Services or part thereof; or
- Replace the questioned System, System Software, Services or part thereof with a non-questioned version without loss of material functionality or performance; or
- Modify the questioned System, System Software, Services or part thereof without loss of material functionality or performance so that it is free of claims.

The Contractor shall have no liability to the extent the alleged infringement or unauthorized disclosure is based upon a use of the questioned System, System Software, Services or part thereof in excess of the rights granted hereunder.

## **12.5 EXCLUSION OF ADDITIONAL TERMS**

The Parties, by their representatives signing below, agree with the terms of this Contract. In particular, no shrink-wrap, click-wrap, or other terms and conditions or agreements ("Additional Terms") provided with the System or any products or software hereunder shall be binding on the District, even if use of such products and software requires an affirmative "acceptance" of those Additional Terms before access is

permitted. All such Additional Terms shall be of no force or effect and shall be deemed rejected by the District in their entirety.

## **12.6 EFFECT OF TERMINATION**

12.6.1 Remedies. In the event that the District terminates the Contract in whole or in part as provided hereunder, then:

(a) The Contractor shall (i) stop performing Services under the Contract on the date and to the extent specified in such notice, (ii) promptly transfer and deliver to the District copies of all completed Services and Services in progress in a media reasonably requested by the District, (iii) promptly transfer and deliver all items previously paid for by the District, and (iv) complete performance of such part of the Services as shall not have been terminated by such notice;

(b) Unless the District has terminated the Agreement pursuant to Paragraph 11.43 (Termination for Convenience) of the Contract, the District shall have the right to procure, upon such terms and in such a manner as the District may determine appropriate, goods, services, and other Services, similar and competitive to those so terminated, and the Contractor shall be liable to the District for, and shall promptly pay to the District by cash payment, any and all excess costs reasonably incurred by the District, as determined by the District, to procure and furnish such similar goods, services, and other Services;

(c) The Contractor shall promptly return to the District any and all of the District's Confidential Information that relates to that portion of the Contract or Services terminated by the District, including all District records, data and other information, in a media requested by the District. In doing so, the District shall remove all copies of such Confidential Information from its media in accordance with Paragraph 8 (Confidentiality) of this Contract;

(d) The Contractor shall tender promptly payment to the District and shall continue to tender payment for the duration of any credits levied pursuant to this Contract, including Exhibit C (Service Levels and Support Requirements), to the extent applicable; and

(e) The Contractor and the District shall continue the performance of the Contract to the extent not otherwise terminated.

12.6.2 Transition Services. Contractor agrees that in the event of any full or partial termination of the Contract for any reason, including expiration, the Contractor shall fully cooperate with the District in the transition by the District to a new contractor toward the end that there be no interruption of the District's day-to-day operations due to the unavailability of the System during such transition. The Contractor agrees that if the District terminates the Contract in full or in part pursuant to Paragraph 11.43 (Termination for Convenience), Contractor shall perform transition services, and shall invoice the District for such

transition services determined in accordance with the rates specified in Exhibit B (Price Sheet) and agreed upon maximum amount, in accordance with a transition plan to be agreed upon, in advance, by the District Project Director and the Contractor Project Director. Contractor further agrees that in the event that the District terminates the Contract for any breach by the Contractor, the Contractor shall perform transition services at no cost to the District. In connection with the provision of any transition services pursuant to this Paragraph 12.6. 2, Contractor shall provide to the District Project Director, upon the District Project Director's request, documentation that reasonably details the source and amount of the expenses the Contractor purports to have incurred in the provision of such transition services.

- 12.6.3 Remedies Not Exclusive. The rights and remedies of the District set forth in this Paragraph 12.6 are not exclusive of any other rights and remedies available to the District at law or in equity, or under the Contract.

## **12.7 SURVIVAL**

In addition to any provisions in this Contract which specifically state that they shall survive the termination or expiration of the Contract, the provisions in the following Paragraphs shall also survive the expiration or termination of this Contract for any reason:

- Paragraph 3.3 Approval of Work
- Paragraph 6.2.1 District's Right to Withhold Payment
- Paragraph 7.0 Ownership and License
- Paragraph 8.0 Confidentiality and Security
- Paragraph 11.6 Compliance with Applicable Laws
- Paragraph 11.17 Employment Eligibility Verification
- Paragraph 11.19 Fair Labor Standards
- Paragraph 11.21 Governing Law, Jurisdiction and Venue
- Paragraph 11.23 Indemnification
- Paragraph 11.24 General Provisions for all Insurance Coverage
- Paragraph 11.25 Insurance Coverage
- Paragraph 11.28 No Third Party Beneficiaries
- Paragraph 11.49 Validity
- Paragraph 12.2 Warranties
- Paragraph 12.3 Intellectual Property Warranty and Indemnification
- Paragraph 12.6 Effect of Termination

IN WITNESS WHEREOF, the Contractor has executed this Contract, or caused it to be duly executed and the Consolidated Fire Protection District of Los Angeles County, by order of its Board of Supervisors has caused this Contract to be executed on its behalf by the Chair of said Board and attested by the Executive Officer-Clerk of the Board of Supervisors thereof, the day and year first above written.

**CONTRACTOR:**

By [Signature]  
Signature  
VP & GM, Data Solutions  
Title

**CONSOLIDATED FIRE PROTECTION DISTRICT OF  
LOS ANGELES COUNTY**

By [Signature: Mike Antonovich]  
Mayor, Board of Supervisors

**ATTEST:**

PATRICK OGAWA  
Acting Executive Officer  
of the Board of Supervisors

By [Signature: Carla Little]



I hereby certify that pursuant to  
Section 25103 of the Government Code,  
delivery of this document has been made.

PATRICK OGAWA  
Acting Executive Officer  
Clerk of the Board of Supervisors

By [Signature: Carla Little]  
Deputy

**APPROVED AS TO FORM:**

MARK J. SALADINO  
County Counsel

By [Signature: Mark J. Saladino]  
Principal Deputy County Counsel

**ADOPTED**  
BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

49 JUN 09 2015

[Signature: Patrick Ogawa]  
PATRICK OGAWA  
ACTING EXECUTIVE OFFICER



## REQUIRED FORMS - EXHIBIT 7

REQUEST FOR LOCAL SBE PREFERENCE PROGRAM CONSIDERATION AND  
CBE FIRM/ORGANIZATION INFORMATION FORM

**INSTRUCTIONS:** All proposers responding to this solicitation must complete and return this form for proper consideration of the proposal.

I. **LOCAL SMALL BUSINESS ENTERPRISE PREFERENCE PROGRAM:**

Firm Name: ScanHealth Inc., dba Sansio

County Vendor Number: \_\_\_\_\_

- ☐ I AM ☐ A Local SBE certified by the County of Los Angeles Internal Services Department (ISD) as of the date of this proposal submission.
- ☒ I AM NOT
- ☐ As an eligible Local SBE, I request this proposal be considered for the Local SBE Preference. (Attach Local SBE Certification letter issued by County of Los Angeles ISD)

II. **FIRM/ORGANIZATION INFORMATION:** The information requested below is for statistical purposes only. On final analysis and consideration of award, contractor/vendor will be selected without regard to race/ethnicity, color, religion, sex, national origin, age, sexual orientation or disability.

Business Structure: <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Non-Profit <input type="checkbox"/> Franchise <input type="checkbox"/> Other (Please Specify) _____						
Total Number of Employees (including owners): 70						
Race/Ethnic Composition of Firm. Please distribute the above total number of individuals into the following categories:						
Race/Ethnic Composition	Owners/Partners/ Associate Partners		Managers		Staff	
	Male	Female	Male	Female	Male	Female
Black/African American	Sansio is a wholly subsidiary of the entity, Physio-Control, and therefore is not able to complete this section of the report.		0	0	2	0
Hispanic/Latino			0	0	0	0
Asian or Pacific Islander			0	0	1	0
American Indian			0	0	0	0
Filipino			0	0	0	0
White			9	1	36	21

III. **PERCENTAGE OF OWNERSHIP IN FIRM:** Please indicate by percentage (%), how OWNERSHIP of the firm is distributed.

	Black/African American	Hispanic/Latino	Asian or Pacific Islander	American Indian	Filipino	White
Men	Sansio is a wholly subsidiary of the entity, Physio-Control, and therefore is not able to complete this section of the report.					%
Women						%

IV. **CERTIFICATION AS MINORITY, WOMEN, DISADVANTAGED, AND DISABLED VETERAN BUSINESS ENTERPRISES:**

*If your firm is currently certified as a minority, women, disadvantaged or disabled veteran owned business enterprise by a public agency, complete the following and attach a copy of your proof of certification. (Use back of form, if necessary.)*

Agency Name	Minority	Women	Disadvantage	Disabled Veteran	Expiration Date

V. **DECLARATION:** I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE ABOVE INFORMATION IS TRUE AND ACCURATE.

Kevin Noreen  
Print Authorized Name

  
Authorized Signature

VP Finance  
Title

04/25/2014  
Date

**REQUIRED FORMS – EXHIBIT 15 (aka EXHIBIT B)  
PRICING SHEET – ePCR**

Business Name: ScanHealth, Inc., dba Sansio

Address: 11 E Superior Street, Suite 310

City: Duluth State: MN Zip: 55802

Phone # 218.625.7214 Fax # 625.7225 24 hr. Phone # 218.625.7214

Email: kevin.noreen@sansio.com LA County WEBVEN Vendor # (required) 17022301

This Exhibit B (Pricing Sheet) is an attachment and addition to the Contract for Mobile Electronic Patient Care Report System, (the "Contract"). Unless specifically defined in this Exhibit B (Pricing Sheet), capitalized terms shall have the meanings set forth in the Contract.

### 1. Introduction

The fundamental premise of the fee and pricing structure under this Contract is that all elements of the Services as described in the Contract are to be paid for only in the amount, and solely through the contractually specified mechanisms for payment of the fees (the "Authorized Billing and Payment Mechanisms") set forth in this Exhibit B (Pricing Sheet), regardless of whether or not all costs or expenses to Contractor of providing a specific element of the Services can be directly traced to, or are captured by, an Authorized Billing and Payment Mechanism. Authorized Billing and Payment Mechanisms are described in Section 2 (Authorized Billing and Payment Mechanisms). It is understood and agreed by the parties that the total amount to be paid by District under the Contract cannot exceed the Maximum Contract Sum unless the Maximum Contract Sum is modified by an Amendment to the Contract in accordance with the requirements of Section 11.1 (Change Notices and Amendments) of the Contract. The Contract Sum is the maximum amount that could be paid, but is not a commitment to spend Pool Dollars allocated under the Maximum Contract Sum for Additional Work.

### 2. Authorized Billing and Payment Mechanisms

There are only five (5) Authorized Billing and Payment Mechanisms for payment of the fees under this Contract. Each of these is detailed in this Section 2 (Authorized Billing and Payment Mechanisms):

1. Milestone Payments as part of the Fixed Fees for Implementation Services;
2. License Fees for Software;
3. Maintenance and Support Fees;
4. Hosting Fees; and
5. Additional Work.

Contractor cannot invoice District under the Contract except as provided under one of the Authorized Billing and Payment Mechanisms, and will not be entitled to, and will not receive, any payment, except as provided under one of the Authorized Billing and Payment Mechanisms set forth in Section 2 (Authorized Billing and Payment Mechanisms).

#### 2.1 Milestone Payments as part of Fixed Fees for Implementation Services

This Exhibit B (Pricing Sheet) sets forth the Fixed Fees for Implementation Services and the Milestone payment structure and amounts ("Milestone Payments"). The Fixed Fees for Implementation Services and Milestone Payments amount is fixed and is not subject to change. The Milestone Payments are to capture all compensation to Contractor for the Implementation Services from the Effective Date through the Final Acceptance of the System by District.



CONTRACTOR NAME Sansio

Page 2 of 2

<b>Fixed Fees for Implementation Services:</b>		\$300,000	[Insert proposed Implementation Fees]	
<b>Milestone</b>	Acceptance by District of the design and planning documents developed as Deliverables 1.1 through 1.14 of the SOW	Acceptance by District of Deliverable 2.7 (Initial Build / Configuration of the System)	Acceptance by District of Deliverable 2.8 (Final Acceptance Test)	Acceptance by District of Deliverable 2.9 (Test Agreement Survey / Successful Deployment)
<b>Milestone Payment as Percentage of Fixed Fees for Implementation Services</b>	\$100,000 [Insert proposed Milestone Payment]	\$50,000 [Insert proposed Milestone Payment]	\$50,000 [Insert proposed Milestone Payment]	\$100,000 [Insert proposed Milestone Payment]

## 2.2 License Fees for Software

The aggregate License Fees for all System Software, including Third Party Software, provided by Contractor pursuant to this Contract is \$995,400<sup>a</sup> [insert proposed license fee amount]. The License Fees is fixed and is not subject to change. License Fees are payable as set forth in Section 5.2 (License Fees for Software) of the Contract.

a: License fees billed \$27,650/month for 36 months.

## 2.3 Maintenance and Support Fees

Contractor shall provide the Maintenance and Support Services for the fixed fees set forth in this Section 2.3 (Maintenance and Support Fees). The Maintenance and Support Fees are fixed through the term of the Contract and are not subject to any economic change adjustment, cost of living, or other inflationary escalator during the term.

Annual Maintenance and Support Fees	Monthly Maintenance and Support Fees
\$See monthly [Insert proposed annual maintenance and support fees]	\$27,100 <sup>b</sup> [Insert proposed monthly maintenance and support fees]

b: M&S fees billed \$27,100/month upon system acceptance

## 2.4 Hosting Fees

Contractor shall provide the Hosting Services for the fixed fees set forth in this Section 2.3 (Hosting Fees). The Hosting Fees are fixed through the term of the Contract and are not subject to any economic change adjustment, cost of living, or other inflationary escalator during the term.

Annual Hosting Fees	Monthly Hosting Fees
\$See monthly [Insert proposed annual Hosting Fees]	\$Included in License fees [Insert proposed monthly Hosting Fees]

## 2.5 Additional Work

Payment for Additional Work shall be as set forth in a duly executed Amendment in accordance with Sections 5.6 (Additional Work) and 11.1 (Change Notices and Amendments) of the Contract.

The undersigned shall furnish all labor, equipment, supplies, and materials required to perform services stated above for the District. All rates shall include all overhead, project planner, benefits, and profit. Rates submitted will be considered to include all applicable taxes, fees, etc. Contractor shall itemize service/procedure fees on all invoices.

Dale Pearson, VP, Data Solutions

4/27/2015

Print Name / Title

Date



Signature